UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter of:

EAST BROADWAY MALL, INC., Main Case No.

Debtor. 19-12280-dsj

- -x

AMENDED

United States Bankruptcy Court

One Bowling Green

New York, New York

September 12, 2023

B E F O R E:

HON. DAVID S. JONES

U.S. BANKRUPTCY JUDGE

ECRO: ELECTRONIC RECORDING

1) Confirmation Hearing

2) Motion Filed by the Debtor for Reconsideration

Transcribed by: River Wolfe
eScribers, LLC
7227 North 16th Street, Suite #207
Phoenix, AZ 85020
(800) 257-0885
operations@escribers.net

A P P E A R A N C E S (All present by video or telephone):

SFERRAZZA & KEENAN, PLLC
Attorneys for Debtor
532 Broadhollow Road
Suite 111
Melville, NY 11747

BY: SARAH M. KEENAN, ESQ.

NEW YORK CITY LAW DEPARTMENT
Attorneys for City of New York
100 Church Street
New York, NY 10007

BY: ZACHARY B. KASS, ESQ.
MINDY R. KOENIG, ESQ.

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Bank of Hope
156 West 56th Street
New York, NY 10019

BY: JAMES M. SULLIVAN, ESQ.
ROBERT JEROME MALATAK, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for Office of the United States Trustee
One Bowling Green
Suite 534
New York, NY 10004

BY: MARK BRUH, ESQ.

SOONG LIU, ESQS.
Attorneys for Proposed New Tenant
305 Broadway, Suite 1201
New York, NY 10007

BY: ARTHUR J. SOONG, ESQ.

Also Present:

MATTHEW B. BERK, NYC DCAS

KELLY CHO, Bank of Hope

STEPHAN LEE, Bank of Hope

ANDREW PARK, Bank of Hope

P R O C E E D I N G S

THE COURT: Good day, everyone. It's Judge Jones. Thanks for your patience and needed a minute to pull some papers together. We're here on the East Broadway Mall case, number 19-12280, with two matters on the calendar. One is a motion for reconsideration filed by the debtor, and the other is request for confirmation of a plan as proposed by the plan proponent Bank of Hope.

So nice to see everyone. We've had a lot of proceedings in the case and I know everyone and we already have captured your appearances through the sign-in process. So I think what we can do is just skip appearances and get right down to the agenda.

Further, what I was thinking is it makes sense to deal with the reconsideration motion first because the status of that could impact confirmation. Certainly, if granted, it would impact confirmation, possibly.

But let me hear from counsel for Bank of Hope, if that makes sense to you. Also, are there any further updates with respect to confirmation you want to get on the record up front, or anything else that you want to raise, just by way of organizing today's proceeding?

MR. SULLIVAN: Thank you, Your Honor. Yeah, I think it makes sense to address the reconsideration motion first --

THE COURT: Oh, sorry. Remember to say your name for

our poor absent reporter who's piecing this together.

MR. SULLIVAN: Oh, apologize, Your Honor. James Sullivan, Windels Marx Lane & Mittendorf, counsel for Bank of Hope.

So I agree with Your Honor. I think it makes sense to address the reconsideration motion first and then move on to the hearing on confirmation of Bank of Hope's fourth amended plan and disclosure statement.

We've tried to resolve as many of the issues as we can. I think we have resolved all but one very minor issue with the U.S. Trustee's office. We resolved all the issues related to the exculpation provision in the plan. We filed a proffer, which includes the revised language. And we also submitted a proposed form of order to chambers, and we circulated that amongst the parties. Hopefully everyone has received and had a chance to look at that.

We have one minor issue with the U.S. Trustee's office just related as -- as it relates to whether or not any type of court review of my firm's attorney's fees is going to be required. And we still have the debtor's objection to address, as well.

THE COURT: Okay. So --

MR. SULLIVAN: I think that's pretty much for status.

THE COURT: Okay. Thank you for that. Let's, then, turn to the -- I'll ask everyone else to hold their piece for

the moment. But let's turn to Ms. Keenan and the reconsideration motion first, and then we'll see where that leaves us. Okay.

So nice to see you, Ms. Keenan. And it sounds like you've had a busy day. And you can present your reconsideration motion as you wish.

I will say, I'm not -- well, I don't have any very specific things for you to address. I think the opposition makes a pretty strong showing, though, but I'll let you present it however you want.

MS. KEENAN: Okay. Thank you. Good morning, Your Honor.

We made the motion because the principals of the debtor were very upset about the releases that they would have to give the City.

THE COURT: I'm sorry. Ms. Keenan, your audio.

MS. KEENAN: But I --

THE COURT: Hey, Ms. Keenan, hang on. Your audio feed's kind of a little iffy.

MS. KEENAN: Okay. This is --

THE COURT: I don't know if there's --

MS. KEENAN: -- a new microphone.

THE COURT: So start over, and if keeps breaking up, we may have you drop your video and see if that just --

MS. KEENAN: All right. Is that --

THE COURT: That's better.

MS. KEENAN: -- any better?

THE COURT: Yeah.

MS. KEENAN: Okay. This is new for me, this microphone.

My clients, the principals of the debtor, were upset about the release language in that stipulation. They have felt that they were really put out of business by the City and that is why we are where we are today. I explained to my client that -- and I read this -- really, it came out in Mr. Kass' response, that basically the City is releasing the debtor, and the debtor won't be able to show any damages because they're basically settling their claims for less than two million dollars.

So as far as the debtor goes, I don't think that we have a motion to pursue now on that, and I'm not sure -- I mean, looking at it, at that in that way, I can't show damages, and so what would they pursue. And so as a result, that is not a motion that I think can be won at this juncture. I know Your Honor said that you had some feelings about it.

But I don't want to prolong this. They're very, obviously, devastated by this. They would never have signed off on the stipulation.

I stand by what I've said all along that this was a nonnegotiable provision mandated by the City, not bank of Hope.

I never complained about Bank of Hope on this. It was always against the City. They would not give us the thirty days which they would need in order to put together or get an appraisal for the funder.

And so they put in everything. And for those thirty days, they were insisted on it. And I had no choice, and I really feel like I did have a gun to my head. But it is what it is, and they are getting their release and --

THE COURT: They, the debtor, are?

MS. KEENAN: That's for the debtor.

THE COURT: The debtor is getting a release? Yeah. Okay. Okay. So does that translate to debtor withdrawing the motion for reconsideration?

MS. KEENAN: Based upon the release language, it does because I do not believe I can be meritorious on it otherwise.

THE COURT: Okay. So I'm hearing that this is --

MS. KEENAN: I mean, obviously, I have clients who are very adamant about the fact that they would never have given up their rights. But even if that language wasn't there, they're getting the release anyway. And at the end of the day, they've lost. And it's sad.

THE COURT: Right. Okay. So look, Ms. Keenan, I understand, and we've had a -- we've gone a long road in this case together and with the prior judge as well, of course. And so you've made clear your client's concerns and disappointment

at how the case has shaped up and the seeming outcome. So I fully understand that.

I just want to make sure I'm administering the case correctly. And so what I am hearing is that you said, yes, based on the current circumstances and the procedural developments, debtor's withdrawing the motion for reconsideration; is that right?

MS. KEENAN: I think, actually, based upon what you said when you sat on the bench, based upon the papers that have been filed and the opposition that was filed, that if we could have a decision on it. It could be a short-order decision, but I think that would be better.

THE COURT: Okay. That's fine. Is there anything you want to add with respect to the contentions that you haven't covered already on the reconsideration motion?

MS. KEENAN: No, I think I've put it all in the papers. I've been --

THE COURT: Okay. Yeah, and I'm sure --

MS. KEENAN: I've said it a hundred -- every which way but loose, I've said it.

THE COURT: Right. Okay. I've reviewed the papers of all parties on the motion, of course. So thank you. That's fine.

Does any other party want to be heard with respect to the reconsideration motion?

Okay. I paused and heard silence. I'm going to take that that everyone is content to rest on their papers, which I likewise have reviewed. And I'm prepared to rule on the motion. So the following constitutes the oral ruling of the Court, and I will ask the parties to make sure they order the transcript so that the record captures the Court's oral ruling.

Debtor moves pursuant to Federal Rule of Civil Procedure 60(b)(3) and potentially 60(b)(6), seeking to vacate a stipulation and order establishing deadline for certain actions by debtor, City of New York, and Bank of Hope pertaining to debtor's interest in lease for 88 Broadway, which should be 88 East Broadway, New York, New York, so ordered by the Court and entered on June 22 of the year 2022. I'll refer to that document as the stipulation, or stipulation and order. It's docketed at ECF number 110.

In support, debtor supports the declaration of Grace Chan, which appears at ECF number 183, and an affirmation of debtor's attorney Sarah Keenan, which appears at ECF number 183-1. As Ms. Keenan highlighted in her remarks just now, debtor takes the strong view that the City treated debtor unfairly consistently throughout the case. Essentially made a predetermination that it was not going to continue doing business with the debtor.

The debtor, by way of background, leases the premises of a mall in Chinatown called the East Broadway Mall from the

City, which is the landlord as well as a governing or regulating body of the debtor. And the stipulation in question from which debtor seeks relief was dated, as I said, June 22nd of 2022 and had quite a number of salient provisions from which the debtor seeks relief.

Particularly troubling to the debtor is a requirement that as a condition of the parties' agreement that the debtor shall have further -- would have further time to try to develop a confirmable plan and business partner and proceed seeking to continue operating the premises in question. The parties required the debtor, as a condition of that stipulated extension of time, to, among other things, agree to drop a pre-bankruptcy litigation that the debtor had pending against the City and as well as -- as well as affording other relief.

The debtor complains that the stipulation's terms were, as a practical matter, coercively imposed on the debtor because the negotiating other parties, the Bank of Hope, which is the secured lender of the debtor, and the City, in its capacity as landlord, insisted on that term at a time when the debtor was going to have its rights expire unless it negotiated and secured an extension of time. The stipulation, which is docketed in the case bearing signatures, including of debtor's attorney Ms. Keenan, as well as counsel for Bank of Hope and for the City, and it, again, was so ordered by the Court.

The Court is going to deny the motion because it

simply fails to meet the standards required for obtaining relief under Rule 60(b). I largely agree with the legal analysis set forth in the Bank of Hope's opposition. But in brief, I will just observe that the debtor's motion, while it emphasizes facts that understandably are distressing to the debtor, does not identify any basis for relief, specifically under Rule 60(b)(3).

By way of background, the stipulation was entered, again, in June of 2022. There's been no showing of any fact from which any even plausible inference, much less preponderance-backed conclusion, could be made that any party to the stipulation, whether Bank of Hope or the City, engaged in any form of fraud, misrepresentation, or misconduct in the inducement of the stipulation. It simply was a negotiated stipulation, providing valuable and meaningful considerations or concessions to debtor in exchange for securing certain considerations or concessions from the debtor for the benefit of other parties.

The agreement arises against a long procedural backdrop in this case, which was filed in July of 2019, way back before anyone had heard of COVID. The debtor had a very substantial amount of time to pursue relief under the Code and develop a confirmable plan, but it failed to do so, really, at any time. It's understandable that COVID severely impacted the debtor, which was a retail operation located in a dense

community that was severely impacted by COVID. And it's a tightly-spaced indoor facility, which is just sort of tailor-made for struggling with COVID. And the Court appreciates and understands that.

Nevertheless, the case has seen a series of conceptual extensions of time, including on consent of the City to permit debtor to attempt to develop viable financing options and a workable plan that was acceptable to the City. The docket sheet is peppered throughout the years 2020 and 2021 with extensions and memorialization of further forbearances and further agreements of time.

Further, well, just by way of example, there were statements by the City, which are docketed on January 27th of 2021, again, a further extension of this on consent of the City on March 15th of 2021, and a further extension May 17th of 2021, in all of which the City stated that it was allowing time to let the debtor try to develop a workable approach by which it could maintain control of the property and emerge as a successfully reorganized debtor.

Finally, in September of 2021, the City informed the Court that it wouldn't consent to more formal extensions along these lines. And yet, even so, on through December of 2021, negotiations continued on an informal basis, and the Court entered a scheduling order in December 2021, allowing those settlement discussions to continue informally with a briefing

schedule imposed if lease issues could be resolved consensually by February of 2022. That did not occur.

So I paused to give that recitation, just to make clear that although I understand debtor's distress, the requirements of the stipulation from which relief is now sought did not come out of thin air, but rather were the culmination of a lengthy and unsuccessful series of discussions. And the reason for the stipulation was to give the debtor one last chance to try to pull together a viable pathway. And at the advanced stage of this case at which the parties reached that agreement, they want to ensure that in the event debtor did not succeed, various disputes would be eliminated and taken off the table so that the case could finally proceed in an orderly fashion and the facility could hopefully be put to productive use.

So in preparing for the hearing, I considered a Eastern District of New York decision by Judge Scarcella in In re: Koper, 552 B.R. 208, 215 (Bankr. E.D.N.Y. 2016). And I view the analysis in that case as exactly on point where a party is seeking relief from a stipulation under Rule 60(b)(3). In that case, again, In re: Koper, after the parties agreed to settle a dispute, the debtor filed a motion to vacate the order approving the stipulation, again, as here, pursuant to Rules 60(b)(3) and (6), arguing that the debtor was induced to enter the stipulation by misrepresentations and misconduct of the

plaintiff.

That contention was rejected, noting that relief from judgment is generally not favored and properly granted only upon a showing of exceptional circumstances. See United States v. International Brotherhood of Teamsters, 247 F.3d 370, 391 (2d Cir. 2001). See also Nemaizer, that's N-E-M-A-I-Z-E-R, v. Baker, 793 F.2d 58, 61 (2d Cir. 1986).

Further, whether a motion for relief under Rule 60(b) should be granted as subject to the sound discretion of the Court, see e.g. In re: Taub, 421 B.R. 37, 42 (Bankr. E.D.N.Y. 2009).

Drawing from the Nemaizer decision I already cited, the Second Circuit has observed that, "When the parties submit to an agreed-upon disposition instead of seeking resolution on the merits ... the burden to obtain Rule 60(b) relief is heavier than if one party proceeded to trial, lost, and failed to appeal." Nemaizer, 793 F.2d, 63.

That is to say, when a party makes a deliberate, strategic choice to settle, she cannot be relieved of such a choice merely because her assessment of the consequences was incorrect. United States v. Bank of New York, 14 F.3d 756, 759 (2d Cir. 1994).

There is abundant law to the same -- holding the same thing. I'm not going to elaborate on it here. I don't think that's meaningfully disputed in the briefing.

To prevail under Rule 60(b)(3), then, the movant must demonstrate by clear and convincing evidence that the order or judgment from which relief is sought was procured by fraud, misrepresentation, or other misconduct. See Fleming v. New York University, 865 F.2d 478, 484 (2d Cir. 1989). See also In re: Waugh, 367 B.R. 361, 367 (Bankr. E.D.N.Y. 2007), quoting other cases.

Here, debtor simply identifies no fact and nothing more than a conclusory allegation of fraud, if that, that was material to the outcome or the Court's entry as an order of the parties' stipulated agreement. I don't think I need to elaborate on that conclusion. That is the fundamental reason for the Court's ruling, and no fact has been identified, again, to support the required conclusion that's needed to grant relief under Rule 60(b)(3).

I will say that debtor points to some later developments, including a potential stay violation by the City in the form of what appears to be an automatically generated collection notice or payment-due notice that was generated, but none of that is material to the question of whether the stipulation was fraudulently induced in the first place.

Debtor also is not entitled to relief under Rule 60(b)(6), which is effectively a catch-all provision that allows a court to set aside a final order or judgment for any other reason that justifies relief. Plaintiff hasn't developed

any contentions under Rule 60(b)(6) and has, in fact, framed its request for relief in terms expressly covered by Rule 60(b)(3). Where a more specific provision such as 60(b)(3) applies and is not satisfied, relief under Rule 60(b)(6) is unavailable.

So for these reasons, the Court denies the motion for reconsideration of debtor. I will ask the Bank of Hope as the opponent to the motion to submit a proposed order memorializing that denial of the motion and referencing and incorporating the Court's oral ruling as the basis for that denial. Okay.

All right. So thanks --

MR. SULLIVAN: Yes, Your Honor.

THE COURT: -- everybody. And let's turn to the confirmation hearing portion of the agenda.

So I'll turn it over to Mr. Sullivan for that.

MR. SULLIVAN: Thank you, Your Honor. As I mentioned a few moments ago, we did file a -- on the docket a proffer of what we hope to elicit during the confirmation hearing today. I'm happy to read the proffer on the record if Your Honor wants. I don't know how much time we have, so I don't want to belabor the point if --

THE COURT: Yeah. Yeah, I'll tell you, I have a hard stop at 1:30. I'd love to finish by 1, and if necessary, I could resume later in the afternoon. But I do have another thing. How long is your proffer?

MR. SULLIVAN: It's about ten pages, Your Honor. So I could try to either goes to the heart of the matter, and at least what I view as the heart of the matter. Or if Your Honor wants to just take notice of the fact that it's on the docket and then we could subject -- if Ms. Keenan or any other party wants to engage in cross-examination, we could deal with it that way. I don't want to suggest to Your Honor what you would -- how you would like the presentation to be made.

THE COURT: Oh, I, in turn, don't want to short-circuit the process. I want you to make the record you want and develop the evidentiary basis you want and need. And so whatever you think is going to work is fine. And I don't know if -- have you discussed this with Ms. Keenan before now?

MR. SULLIVAN: I haven't. No, Your Honor.

THE COURT: Okay. So let me just -- I think that what I should do is not dictate how you make your record. So I'm going to let you present how you want. If you want to -- I guess your idea of the proffer is to provide information, and you have a competent witness available to testify to the event -- to the matters presented if necessary?

MR. SULLIVAN: I do, Your Honor. I have Mr. Andrew Park, who is with Bank of Hope. He's on the Zoom line today. Two of his colleagues are also on, just in case. But he would be the primary witness that I would use if I needed to put him on the stand, Your Honor.

THE COURT: Okay. So I think I'm just going to do what I said, which is give you free rein. If I run out of time and need to stick you with a break, I'll just have to do that, which would be unfortunate, but sometimes necessary. So we'll see.

MR. SULLIVAN: Okay, Your Honor. I'll try to -- I'll try to speak relatively quickly, but I think it would be helpful to just kind of go through the various items in the proffer, and this way, it kind of, like, creates the record, in case we need to have any kind of further discussion about it.

THE COURT: Okay.

MR. SULLIVAN: Your Honor, so the offer of proof is made to demonstrate compliance with Bankruptcy Code Section 1129 in support of confirmation of Bank of Hope's fourth amended Chapter 11 plan for liquidation, which was filed on July 5, 2023, and Bank of Hope's fourth amended disclosure statement on a final basis. Your Honor may recall that you approved that on a -- you allowed a couple of objections to the disclosure statement to be carried until today, but I believe we've pretty much resolved those. I guess we can check with Mr. Bruh on that, but I'm not sure of --

THE COURT: Those were the U.S. --

MR. SULLIVAN: -- any that remain.

THE COURT: Yeah. You're referring to the U.S. Trustee objections to the disclosure statement, right, which

were --

MR. SULLIVAN: Yes, Your Honor. Yes, Your Honor.

THE COURT: Okay.

MR. SULLIVAN: So the plan and disclosure statement were filed ECF docket number 186 and were also attached to a copy of Your Honor's form of order approving the disclosure statement, which was docket number 188.

Your Honor, we would ask that you take judicial notice of all documents filed in the debtor's bankruptcy case, including Bank of Hope's proof of claim.

As I mentioned a few moments ago, Mr. Andrew Park is in attendance today. If called to testify, Mr. Park would testify under oath as set forth below from his own personal knowledge and information provided to him by certain of Bank of Hope's employees and professionals, from his review of business records maintained by Bank of Hope and relating to the debtor in the ordinary course of its regularly conducted business activities, from his knowledge concerning the relationship between the Bank of Hope and the debtor, as well as with the City, and certain relevant operations and financial affairs of the debtor.

Mr. Park would testify to the salient elements of the disclosure statement and plan. Mr. Park is a senior vice president and manager special assets department for Bank of Hope. He is familiar with Bank of Hope's financial dealings

with the debtor. And Mr. Park is the person designated to be responsible in consultation with legal counsel and other court-approved professionals for Bank of Hope's involvement in the debtor's Chapter 11 case, including with respect to development of the plan and disclosure statement, the extensive work of Bank of Hope with the City toward implementation of the new lease that is the basis for the plan. Mr. Park has reviewed and is familiar with the terms and provisions of the plan and disclosure statement.

Based on his involvement in debtor's Chapter 11 case, his knowledge of relevant information, and his review of matters with Bank of Hope's outside professionals, Mr. Park is familiar with matters relating to confirmation of the plan. He would testify -- with respect to Bank of Hope's history of financial dealings of the debtor, both pre-petition and since the debtor initiated this Chapter 11 case, he would testify to Bank of Hope having given the debtor every opportunity to come up with a viable plan, which it never did.

Mr. Park would also testify to the process obtaining a best and final bid from all interested parties, including the debtor, and address the selection process for the approved new tenant. He'd also testify regarding Bank of Hope's concerns regarding the debtor's proposal, including the lack of committed funding to support the debtor's proposal and the teleconference between representatives of the debtor and the

Bank of Hope and their counsel to address these funding concerns, debtor's acknowledgment during the teleconference of these deficiencies in its proposal, and debtors failure to address these deficiencies. Mr. Park would also testify that Bank of Hope worked with the City in good faith to find the best path forward for the debtor's case.

And regarding the determination that Broadway Group LLC made a viable offer, which was determined to be the best and highest offer among the four total bids received and was the most likely to be consummated in a timely manner, its election as the approved new tenant under the new lease, its posting of a one-million-dollar deposit at Bank of Hope's request, which is now being held in escrow and will be available to fund the approved new tenant's obligations under the plan, and Bank of Hope's work with the City and the approved new tenant to negotiate the terms of the new lease.

Mr. Park would also testify that debtor never offered with any of its proposals to post a deposit, and upon information and belief, debtor remains incapable of doing so to date.

Mr. Park would also testify to development of the disclosure statement and plan. He would speak to implementation of the plan, including that upon his knowledge, information, and belief and conversations with outside professionals and the representatives of the City and Broadway

East Group, LLC that each of Bank of Hope, the City, and Broadway East Group, LLC will have the ability to satisfy their obligations under the plan.

Mr. Park would further testify that given these circumstances, there will be sufficient funding for distributions and allowed administrative expenses under the plan.

Mr. Park would also testify that upon his knowledge, information, and belief, and conversations with outside professionals and the representatives of the City and Broadway East Group, LLC that the lease with the new approved tenant has been approved by unanimous votes after meetings of the Community Board Committee and the full community board, and that a borough board hearing is currently scheduled for September 21, 2023, and a subsequent public hearing for mayoral approval is scheduled for September 27, 2023, and upon information and belief, no further hearings would be required.

Mr. Park would further testify that the parties to the new lease would work to resolve any outstanding issues by the effective date, and no circumstance exists that would be a basis for delaying confirmation of the plan.

Your Honor, then I just -- Mr. Park would then testify as to the various components of Section 1129 of the Bankruptcy Code and the compliance of the plan with each of those provisions. So I'm going to go through section by section and

just kind of briefly describe, by way of proffer, the facts which support confirmation of the plan as it relates to each of those sections.

With respect to Section 1129(a)(1), a review of the plan, together with the proffer of testimony of Mr. Park, will show that Bank of Hope has satisfied Bankruptcy Code Section 1129(a)(1), which requires that the plan complies with the applicable provisions of the Bankruptcy Code. The plan complies with the mandatory requirements set forth in Bankruptcy Code Section 1122 and 1123(a), and all plan provisions are permitted by the applicable subsections of Bankruptcy Code Section 1123.

The plan provides for adequate means for its implementation through, among other things, the new lease agreed upon by the City, Bank of Hope, and the approved new tenant and the agreement of those parties to evenly share payment of all administrative expenses and priority claims. Valid business, legal, and factual reasons exist for the separate classification of each of the classes of claims created and the treatment under the plan. The claims in each class are substantially similar to the other claims in the same class.

With respect to Section 1129(a)(2), a review of the docket --

THE COURT: I'm going to jump -- I'm sorry, Mr.

Sullivan. I want to jump in. I'm happy --

MR. SULLIVAN: Sure.

THE COURT: The proffer, it's great that you're doing the proffer. I have no problem with your proceeding this way.

If this purports to be a summary of the testimony that Mr. Park would provide, I just don't know that he's competent to attest to the existence of valid business, legal, and factual reasons. I mean, I guess he can say -- I guess he is probably capable to talk about valid business reasons or the Bank of Hope's actual business reasons or factual reasons, but I don't know that he's qualified to --

MR. SULLIVAN: It's probably more of a legal issue, Your Honor.

THE COURT: -- testify as to the legality, the legal conclusions (indiscernible) here.

MR. SULLIVAN: Yeah, it's probably more of a legal issue. So to the extent that there are any factual underpinnings underneath that and that Your Honor wanted to address, he would certainly be available to address any of those concerns. And some of these --

THE COURT: Okay.

MR. SULLIVAN: Some of these, obviously, when you're going through these 1129 provisions, a lot of them are either legal or mixed factual and legal. So I understand that to some extent, he's relying upon what I have told him to a large

extent. And so I just ask you to kind of take it for what it's worth, that he would be offering whatever business justifications might exist with respect to each of these sections of the Bankruptcy Code to ensure compliance with the plan with each of those provisions.

THE COURT: Okay. I'm fine letting you proceed along the lines you describe. I just want to, I guess, maybe for record purposes, say I will not accept Mr. Park's legal opinion as certainly binding on me or necessarily established. I think the legal conclusions that are --

MR. SULLIVAN: Understood, Your Honor.

THE COURT: -- advanced are for me to make, not for him to establish. But you can go right ahead and frame it that way.

MR. SULLIVAN: Understood, Your Honor. It really is just a foundation for demonstrating a desire and an intent to comply with each of the provisions. And --

THE COURT: Right. No, it's a good --

MR. SULLIVAN: I certainly believe that they (indiscernible) --

THE COURT: It's a good organizational device. I'm just hanging up on this one --

MR. SULLIVAN: Okay.

THE COURT: -- on the characterization of what exactly it is that he would be testifying to. So but go right ahead.

MR. SULLIVAN: Understood, Your Honor.

THE COURT: And certainly, the framework is helpful.

MR. SULLIVAN: I appreciate you butting in and kind of highlighting that, Your Honor.

With respect to Section 1129(a)(2), a review of the docket and testimony proffered by Mr. Park would establish that the plan complies with Section 1129(a)(2), which requires that the proponent of a plan complies with all applicable provisions of the Bankruptcy Code, including with respect to its compliance with the requirements governing the solicitation of acceptances of the plan.

The plan proponent Bank of Hope has complied with all applicable provisions of the Bankruptcy Code. By this Court's order, dated July 6th, 2023, ECF docket number 189, the disclosure statement and plan solicitation documents were approved, and all solicitation package materials were thereafter transmitted to creditors and other recipients as required thereby. And that can be reflected in docket entries 199, 200, 201, and 202.

Moreover, the filed affidavits of service and the certification of ballots reflect that Bank of Hope has complied with the Sections 1125 and 1126 of the Bankruptcy Code, and this testimony will establish that Bankruptcy Code Section 1129(a)(2) is therefore satisfied.

And I get to it a little bit at the end, Your Honor,

or as appropriate, but the certification of ballots is reflected on the docket as document number 198 and was filed on August 25, 2023. And it reflects the submission of four ballots in connection with the plan, three of which were submitted by Bank of Hope in connection with the various classes of claims for which it held claims and one by the City with respect to the class of -- with respect to its claim.

And it shows that as a result of the balloting that the Class 1 secured claim of Bank of Hope, there was one vote in favor of the plan, which accepted it. There were no Class 2 claims. Class 3(a) is tax claims unimpaired, therefore deemed to accept. Class 3(b), that's the adequate protection claim of Bank of Hope, so one claim was voted to accept. No rejections. Class 4(b), Your Honor, there are two votes received, one by Bank of Hope and one by the City of New York. Both of those claims, again, voted to accept the plan, and there were no rejections. And none of the creditors, Your Honor, elected to receive Class 4(c) treatment, which was a convenience class that had been created. And then Class 5, which is the interestholders, they've been deemed to reject the plan.

Next, Your Honor, with respect to 1129(a)(3), Mr. Park would testify that the plan complies with Section 1129(a)(3) of the Bankruptcy Code, which requires that the plan was proposed in good faith and not by any means forbidden by law. The plan was proposed in good faith and was filed with the legitimate

and honest purpose of maximizing the value of the debtor's estate and the recoveries to holders of allowed claims in the order of priority under the Bankruptcy Code. This testimony will therefore establish that Bankruptcy Code 1129(a)(3) has been satisfied.

With respect to Section 1129(a)(4), a review of the plan shows that it provides for the payment of all allowed administrative expenses and includes a third administrative expense bar date. In addition, the fees of estate professionals are subject to the approval of the Court. Such testimony will therefore establish that Bankruptcy Code Section 1129(a)(4) has been satisfied.

With respect to Section 1129(a)(5), Mr. Park would testify that the Bank of Hope's plan supplement, which was filed at docket number 195 and the related exhibits, identifies GlassRatner Advisory & Capital Group LLC doing business as B. Riley Advisory Services as the plan administrator and that both the plan and plan supplements speak to the relevant terms of its administration. Mr. Park would also provide an update on the entry into an agreement between Bank of Hope, only in its capacity as planned proponent and the proposed plan administrator. A form of agreement has been circulated to the U.S. Trustee's Office, as well as -- as well as, I believe, counsel for the City. And I'm not a hundred percent sure if counsel for the debtors received that yet, but I think we're

still waiting for comments from the U.S. Trustee's office. So that progress has been made on the plan administrator agreement, and we're hoping that we can finalize that imminently.

With respect to Section 1129(a)(6), this subsection is inapplicable to the plan. Is therefore satisfied.

Section 1129(a)(7), Your Honor, as set forth in the plan with respect to each impaired class of claims or interest, each holder of a claim or interest has accepted the plan as described a little while ago or will receive or retain under the plan on account of such claim or interest property of a value that is not less than the amount such holder would receive or retain if the debtor was liquidated under Chapter 7 of the Bankruptcy Code. Creditors will not receive less than they would receive in a Chapter 7 liquidation. In a Chapter 7, the lease would be rejected and the creditors would receive no distribution.

Further, the plan maximizes the amounts which may be recovered for such creditors and allowed claims. In a Chapter 7 liquidation, there would also be increased fees and costs and expenses, including commissions arising from in the connection with services rendered by a Chapter 7 trustee and their professionals. Accordingly, each nonaccepting holder of a claim or interest under the plan would receive, on account of such claim or interest, property with at least as much value as

such holder would be entitled to receive in a hypothetical Chapter 7 liquidation. Therefore, such testimony would establish that the plan satisfies the best interest test set forth in Section 1129(a)(7) of the Bankruptcy Code.

With respect to Section 1129(a)(8), as described a short while ago, as set forth in the certification of ballots, Classes 1, 2, 3(a), 3(b), 4(a), and 4(b) have accepted the plan or unimpaired by the plan and deemed to have accepted the plan. In addition, there are no members of Class 4(c) because no one elected to receive Class 4(c) treatment.

Class 5 interest is deemed to have rejected the plan, as such class is not receiving or retaining any property under the plan. The plan does not discriminate unfairly and that interests in Class 5 or dissimilar to other classes, and the plan segregation of Class 5 has a rational basis. Moreover, because senior classes are not receiving more than the full value of their claims and no interest that is junior to Class 5 will receive or retain any property under the plan, the fair and equitable standard has been satisfied.

Accordingly, notwithstanding the deemed rejection by Class 5, the plan can still be confirmed. Therefore, such testimony would establish that the plan does not discriminate fairly against Class 5 and is fair and equitable, and therefore Bankruptcy Code Section 1129(b) is satisfied.

With respect to Section 1129(a)(9), the plan provides

that all holders of allowed priority claims, including priority state tax claims, party nontax claims, and administrative claims will be paid in accordance with Section 1129(a)(9), except to the extent that the holder of such claims has agreed to different treatment. Therefore, the plan satisfies Section 1129(a)(9) of the Bankruptcy Code.

With respect to Section 1129(a)(10), at least one impaired class of claims entitled to vote in the plan has accepted the plan. As set forth above, impaired Classes 1, 4(a), and 4(b) have accepted the plan. Therefore, the plan complies with Section 1129(a)(10) of the Bankruptcy Code.

With respect to Section 1129(a)(11), the plan is a liquidating plan. Mr. Park would testify that he believes there are sufficient means to implement the plan as set forth therein, specifically including the funding by the approved new tenant Broadway East Group as set forth in the plan, the plan supplement, and the terms of the new lease to make the distributions to the classes as set forth in the plan and the allowed claims in accordance with the priorities under the Bankruptcy Code. The plan for liquidation is sustainable, provides adequate means for implementation, and is feasible. Thus, no other liquidation of the debtor is anticipated or likely.

Further, the plan was extensively negotiated and discussed with various parties and interests. Moreover,

because the plan is a liquidating plan, such plan provides for payment of allowed claims in the order of -- in order of priority under the Bankruptcy Code. In addition, Bank of Hope, the City, and approved new the tenant have agreed to equally share in the payment of a lot of administrative expenses and priority claims and such allowed expenses and priority claims will be paid in full.

The evidence establishes that there is more than reasonable probability that the provisions of the plan can be performed, and so the plan satisfies the Bankruptcy Code Section 1129(a)(11).

With respect to Section 1129(a)(12), the plan provides for the payment of all fees payable to the U.S. Trustee pursuant to 28 U.S.C. 1930, and the plan therefore complies with Section 1129(a)(12) of the Bankruptcy Code.

Sections 1129(a)(13), (14), and (15), Your Honor, we don't believe those provisions are applicable and so are deemed satisfied.

With respect to Section 1129(a)(16), Mr. Park would testify based on his knowledge, information, and belief, and conversations with outside professionals and representatives of the City and Broadway East Group, to the extent that this provision is applicable to the transfer of the estate's interest in the lease, which we don't actually believe it does, but to the extent that it is, as set forth above, the City is

attaining all required approvals under applicable nonbankruptcy law to the fact the terms of the new lease.

With respect to Section 1129(b), Your Honor, Mr. Park would testify that under the plan, Class 5 interest is dissimilar to the other classes, which are all claims, and the plan segregation of those claims is the rational basis. Class 5 consists solely of interests. Accordingly, the plan does not discriminate unfairly against the rejecting class, thereby satisfying this requirement of Section 1129(b) of the Bankruptcy Code.

Moreover, the plan satisfies the additional requirement of Section 1129(b), insofar as there is no class junior to Class 5 that would receive or retain any property under the plan. And again, no party has claimed that there is unfair discrimination in the plan or that the plan is not fair and equitable. Such evidence would establish that the plan is therefore confirmable under Section 11920(b) (sic) as the sole rejecting class.

With respect to Section 1129(c), Mr. Park would testify that the plan is the sole currently -- is the sole plan currently pending before the Court, and the plan is the only confirmable plan that has been presented to the Court in this case, with debtor's plan already having been rejected.

With respect to Section 1129(d), Mr. Park would testify that the plan does not have, as one of its principal

purposes, the avoidance of taxes or avoidance of requirements of Section 5 of the Securities Act of 1933, nor is Bank of Hope aware of any filing by any governmental agency or any other party in interest asserting such avoidance.

And then, Your Honor, we would testify that with respect to the exculpate --

THE COURT: You said "we would testify".

MR. SULLIVAN: I'm sorry, Your Honor. Mr. Park would testify that the release and exculpation clauses in the plan are essential to the plan, appropriate under applicable law, and constitute a proper exercise of the Bank of Hope's business judgment. The release and exculpation provisions were proposed in good faith, were formulated following arm's-length negotiations with key constituents, and are appropriately limited in scope to achieve the overall purpose of the plan.

Each released and exculpated party made significant contributions to the Chapter 11 case, including with respect to the negotiation and implementation of the new lease and other elements of the plan. Each released and exculpate party participated in good faith and in compliance with applicable law with regard to the solicitation of and distribution of consideration pursuant to the plan and therefore is not -- on account of such distribution shall not be liable at any time for the violation of any applicable law, Rule, or regulation governing the solicitation of acceptances or rejections of plan

or such distributions made pursuant to the plan.

Director in the Chapter 11 case fully supports the exculpation provisions, which are appropriately tailored to protect the released and exculpated parties from inappropriate litigation arising from their participation in the Chapter 11 case and are consistent with the Bankruptcy Code and applicable law.

For the Bank of Hope and the United States Trustee, they agreed to the following language to replace the existing exculpation clause in the plan. The new language would state,

> "To the fullest extent permitted under Sections 1123 and 1125 of the Bankruptcy Code and as provided herein, neither the City, Bank of Hope, nor any of their respective officers, directors, employees and other agents, financial advisors, attorneys and accountants, or the respective successors-in-interest, who have been actively involved in the bankruptcy case, shall have any liability to any holder of any claim or interest for any act or omission between the petition date and the effective date in connection with or arising out of the negotiation, preparation, and pursuit of confirmation of the plan, the consummation of the plan, the administration of the plan, plan solicitation for the property to be distributed under the plan, except for liability based

upon actual fraud, willful misconduct, or gross negligence, as determined in a final order by a court of competent jurisdiction. For the avoidance of doubt, nothing in the plan shall limit the liability of attorneys to their respective clients pursuant to Rule 1.8(h) of the New York Rules of Professional Conduct, 22 N.Y.C.R.R. Section 1200, or effect any criminal enforcement action."

The lone remaining -- Mr. Park would testify that the lone remaining issue with respect to the United States Trustee's objection is as to whether the Bankruptcy Code Section 503(b) is applicable to payment of Bank of Hope's professionals. As set forth in Bank of Hope's reply to the objection, ECF docket number 173, Bank of Hope believes that such payments would not be subject to Section 503(b), as the agreement between Bank of Hope, the City, and the approved new tenant to share responsibilities for such fees and expenses means they will have no impact upon the debtor or its state, given that the amount of fees paid will have no impact upon the recovery to any creditor, other than Bank of Hope and the City. Moreover, any recovery available to other creditors would be carved out of the recovery that would otherwise have been made payable to Bank of Hope and the City.

For these reasons, Bank of Hope believes this last remnant of the United States Trustee's objections should be

overruled. Nevertheless, Bank of Hope has filed an administrative expense claim with respect to the fees and expenses of its legal professionals related to the plan through the second administrative expense bar date, and it will file another administrative expense claim by the third administrative expense bar date and additionally can provide updates as necessary to the Court and the United States Trustee on professional fees and expenses related to towards confirmation and execution of the plan.

And that is the conclusion of the proffer, Your Honor.

THE COURT: Okay. So I think I guess what you'd like me to do is accept that as a proffer of testimony that would be given by Mr. Park if he were called, right? And just and --

MR. SULLIVAN: Correct, Your Honor.

THE COURT: Okay. Does any party object to my accepting the proffer as a summary of testimony that would be offered by Mr. Park, were he called today?

And let me just note that as I foreshadowed at the one point where I interrupted Mr. Sullivan's presentation on the proffer that contained both factual information and then a lot of legal argumentation or characterization, I would not accept as factual evidence the legal conclusions embedded in that discussion. I think that what -- but it's helpful as a framing mechanism, and what I would contemplate doing is accepting the factual content of the proffer, with that explicit proviso.

So with that observation, does anyone have any objection to reliance on the proffer that's just been delivered as the factual predicate for the confirmation hearing today?

MR. BRUH: Your Honor, Mark Bruh for the United Staes Trustee. We appreciate the Court's proviso regarding the proffer offered by Mr. Park in connection with confirmation because we do have concerns in connection with 1129(a)(4) as well as 1129(a)(5) because we just got the plan administrator agreement this morning, and we're going through it. And we just, we believe we will reserve our rights for argument on those issues. As Your Honor said, that seemed --

THE COURT: Got it. Yeah. Let me make clear, I'm really just trying to establish the evidentiary basis for the hearing, and then this is without prejudice to any parties' ability to make whatever argument they want on the legal issues raised.

So I'm hearing you say that on that understanding you're okay. Yeah. Is that right, Mr. Bruh?

MR. BRUH: Yeah. We don't intend to cross Mr. Park.

THE COURT: Okay. That was going to -- you're anticipating my next question.

Nobody has said they object to reliance on the proffer as stated. So let me ask now, does anyone wish to cross-examine Mr. Park?

Okay. I paused, and no one said yes. So I will,

again, accept the proffer as delivered as the evidentiary basis for the confirmation hearing today, subject to my comment just made that I don't -- that the proffer included matters, the content that is more in the nature of legal argumentation.

And so I will accept the proffer as factual to the extent that it is an evidentiarily -- relevant to the extent it's not pure legal conclusion or legal argumentation. To the extent it's argumentation, I just understand it to be a statement of the Bank of Hope's position and support of confirmation. But with that, the proffer is received or incorporated into the record as the factual underpinnings of the confirmation proceeding today.

And I'll turn it back to Mr. Sullivan.

MR. SULLIVAN: Thank you, Your Honor. So if Your Honor had any questions on any of the legal aspects, I'd be happy to address them.

But I guess I would just point out that I believe the objections that were raised, one, by the U.S. Trustee's office, which as I had mentioned earlier, we've resolved almost all of it. It's just, I believe, is the 503(b) issue with respect to my firm's professional fees is the lone remaining issue.

And as, I guess, Mr. Bruh also kind of mentioned, we are still addressing the agreement. I think we're very close to actually -- there was some back and forth earlier this morning, but we're pretty close.

THE COURT: All right.

MR. SULLIVAN: We should have some time --

THE COURT: Restate what's the agreement, what agreement you're referring to? I just want to make sure we have clarity in that.

MR. SULLIVAN: Yeah, we haven't filed it on the record, but as Your Honor may recall, one of the exhibits in the plan supplement -- and the plan supplement, for the record, is docket number 195. So Exhibit 3 to the plan supplement referenced key terms that would be included within the plan administrator agreement, including the identity of the plan administrator as GlassRatner Advisory & Capital Group LLC doing business as B. Riley Advisory Services. It also described what they would be doing and described what their compensation would be and things of that nature.

So what the agreement purported to do would be to just kind of crystallize in a little bit more clear form exactly the duties of the plan administrator and a little bit more detail in terms of some of the other items, Your Honor. So that agreement was circulated to the U.S. Trustee's office, and the U.S. Trustee's office had a couple of questions.

So my guess is we're not going to be able to resolve that issue today, but certainly, prior to the effective date, I believe that we'll be able to get through it. I fair amount of confidence that the plan and -- the proposed plan administrator

will work with the U.S. Trustee's office and my office to resolve any concerns that the U.S. Trustee's office has with respect to the language of that agreement.

THE COURT: Is that an impediment to confirmation today? Do I have to wait for that to be resolved?

MR. SULLIVAN: I don't think so, Your Honor. Certainly, if we have any issues, we can come back to Your Honor. We do have -- I don't believe that the plan will go effective for a few weeks. So we do have time to try to work through those types of issues.

In any case, the plan supplement did identify the key terms of the plan administrator -- of the plan administrator's retention. And one of the provisions of the proposed form of order that we submitted to Your Honor would authorize us to enter into that agreement, so long as it's consistent with what's been represented to be the key terms. And we certainly wouldn't sign anything without having the U.S. Trustee's sign-off on it. And to the extent that we were not able to reach some consensual agreement with the U.S. Trustee' office, then we could always tee it up with Your Honor to resolve any disputes. But I'm not expecting any at this point in time, Your Honor.

THE COURT: I mean, I think I am not -- well, let me say something specific to that, and then I'll have some other questions or things I want to focus on.

On that, are you envisioning sort of a further condition to effectiveness of the plan is arriving at an acceptable form of agreement?

MR. SULLIVAN: I guess that -- I guess we could word it that way, Your Honor.

THE COURT: Or it could be that submission of the confirmation order or potential approval of a confirmation order would be deferred until that's nailed down. I don't know how long you're talking about taking on that process. I mean, that's more comfortable to me, and that also lets --

MR. SULLIVAN: Okay.

THE COURT: -- other parties-in-interest have a crack at seeing it. And if there's a problem with it, they can comment.

I thank the world of the U.S. Trustee's office, but I don't want to offload my judicial responsibility to decide whether or not something's okay on them. I think that would be wrong. And plus, I'm not comfortable with that. And I think it is consistent with due process to let other parties-in-interest know what a constituent element of the plan is going to be before they're stuck with it, as opposed to just having it a blank check, I think.

I guess you would tell me, don't worry, Judge, because it'll be consistent with the key terms here. But if they're material enough that you're arguing about it, that sort of

suggests it's material.

MR. SULLIVAN: I wouldn't say we're arguing about anything, Your Honor. We only just serve the U.S. Trustee's office with it very early this morning. So I don't necessarily think that there's going to be any issue to fight over, but I can't tell you definitively that there won't be (indiscernible) --

THE COURT: All right. Yeah. So I have a couple of other issues I'll want to get to. Here's what I suggest on this issue, and I want to hear from Mr. Bruh.

But my thought is I will let you keep working the issue. Try to arrive at a consensual resolution of that. Give notice to certainly all counsel or parties-in-interest who are attending the hearing today of where you land. And then if nobody objects, I'll consider that issue resolved for purposes of confirmation, and then we can go forward.

I think that is consistent with due process and really a properly functioning adversary process that lets parties-in-interest identify problems, if they exist, and on an outcome that as of right now doesn't exist. And then I expect there's a good shot you'll resolve your issues. And if you do, I'll probably be ready to approve a suitable plan, including that fix when it's ready.

Okay. Is that something you can live with, Mr. Sullivan?

MR. SULLIVAN: Yeah, that's fine, Your Honor.

THE COURT: Okay. So let me raise --

Mr. Bruh, does that work for you?

MR. BRUH: Your Honor, I did look at the plan administrator agreement this morning. I haven't had a thorough read of it, and I appreciate the Court's comments today. There are a couple of technical issues which I think we can get over.

But there is an exculpation provision that is programmatic to our office, and that's the elephant in the room with the agreement. And I don't know if that's something that's going to be resolved as easily as the (indiscernible).

THE COURT: Okay. So exculpation of whom?

MR. BRUH: The plan administrator, and Mr. Sullivan and I were pretty intently and extensively yesterday to come to a consensual provision, which he read into the record today, which was agreed upon between and among the parties. And this seems to expand upon it, and --

THE COURT: Okay.

MR. BRUH: -- we feel (indiscernible) programmatic.

MR. SULLIVAN: Well, I would view that as a separate issue because the exculpation provision that Mr. Bruh and I were sort of negotiating dealt with the parties in connection with the implementation of the plan, primarily, right, between the --

THE COURT: Right.

MR. SULLIVAN: -- petition date and the effective date of the plan. So the plan administration agreement doesn't go in effect until the effective date of the plan. So I don't think the exculpation they're looking for really fits within what we've been discussing in the context of the plan. So they're just --

THE COURT: Right.

MR. SULLIVAN: -- looking for some other kind of -- I guess it's really more akin to some type of indemnity or some other kind of -- and I do think that they'd be willing to kind of negotiate with the U.S. Trustee's office to try to come to a mutual agreement on that. So again, I can't predict with one hundred percent certainty that it will get resolved, but I do think that there seems to be an openness to discuss that and try to work through those issues.

THE COURT: Okay. Look, if there's going to be a principled scope of exculpation issue as to an agreement with the plan administrator -- proposed agreement with the plan administrator that isn't even yet a nonmoving target, I think I need to probably reserve the possibility of ruling with respect to that issue.

I know exculpation issues are a big programmatic issue for the U.S. Trustee's office, which I often deal with. I'm ready to -- I was all ready to rule with respect to the exculpation issues that were made known to me before this

moment. And I think we can -- so I think we can get through other aspects of the plan and confirmation but reserve for future discussion or ruling if necessary, really, anything involving that's currently unresolved regarding the plan administrator agreement and retention. Okay.

So that could be either the 503(b) issue you flagged or the scope of exculpation or whatever or equivalent protections that you're trying to get afforded to the plan administrator. I think I just need to reserve on that until you've had a chance to develop the issues further, reach agreement, which then I will have to substantively satisfy myself with anyway. Or if you don't have agreement, I'll have to adjudicate your dispute. Right. That sound right?

I'll ask Mr. Bruh first for a change. Mr. Bruh, does that sound right to you?

MR. BRUH: That's fine, Your Honor.

THE COURT: And Mr. Sullivan, I don't see how I can do anything more than that, but do you want to push back on that (indiscernible)?

MR. SULLIVAN: Understood, Your Honor.

THE COURT: Okay.

MR. SULLIVAN: Understood.

THE COURT: So let me ask -- I will say, let me memorialize that I know from the disclosure statement hearing and papers filed in connection with it that the U.S. Trustee's

office had an objection to the plan's exculpation provision.

Am I right? Has that been resolved other than with respect to the plan administrator now, Mr. Bruh? Is that U.S. Trustee's office's view?

MR. BRUH: Your Honor, yes. I mean, I believed that it was a hundred percent resolved, as, like, we negotiated yesterday, and then I saw this agreement today, as the exculpation provision Mr. Sullivan read into the record was what we agreed to yesterday after a series of back and forths so --

THE COURT: Okay. So let me say, this is going to be a bite-sized mini -- a ruling, bite-sized mini ruling by me.

I reviewed the exculpation provision as it was included in the plan and then in turn subject as further modified as read into the record today, and I'm satisfied that they're appropriate and permissible, and so I'll approve that. Specifically, I have taken a broader view of what's permitted, and that exculpation needn't be limited solely to estate fiduciaries, citing, among other things, the Aegean Marine and Latam decisions, which I believe are correctly decided. So I'm glad to see that you worked together and reached agreement, and I will be comfortable with the outcome as described on the record today on exculpation.

So let me ask, if I can, Mr. Sullivan, really, the two main questions I had coming into this. One is can you give me

clarity on what is the status of debtor's lease of the premises from the City now and what exactly is happening with respect to that lease with the -- whatever it's called. You're calling it approved new tenant or the East Broadway Group.

MR. SULLIVAN: Correct, Your Honor. So and I'll ask Mr. Kass from the City, counsel for the City, to chime in afterwards if I may misstate anything because some of the information I'm about to tell you I learned or received from him.

So my understanding is that the lease has not been signed yet. The City is waiting until after these two additional community board types of meetings before signing the lease with the approved new tenant, the --

THE COURT: Hang on. Let me --

MR. SULLIVAN: -- Broadway East Group.

THE COURT: Okay. Let me ask -- let me clarify my question. What I wanted to know is the status of debtor's lease, originally signed in -- I guess it was '85 or so and then revised in '95 and which was a leasehold interest that was held by the debtor, certainly as of the petition date and the commencement of the case. And then there's been a long history. There was one order saying it was going to be deemed rejected if the debtor didn't accomplish certain things by a date certain. Then there was a period of further extensions of that deadline. Then, from my review of the record, the status

of the lease seemed to slide into a kind of a nebulous status.

So it's unclear to me if that earlier order saying it was to be deemed rejected took effect or did not. And so I'm trying to understand the status of the lease vis-a-vis the debtor.

MR. SULLIVAN: Okay. So yeah, my understanding, Your Honor, is that the lease is going to be assumed and assigned to the approved new tenant Broadway East Group, as modified by the terms of the new lease that was attached to the plan supplement so --

THE COURT: Okay. Thank you. Yeah, I've reviewed that. I've reviewed the proposed lease document attached to the plan supplement, and which is at least generally consistent with the term sheet that was previously submitted in connection at the time of the disclosure statement, I think. Right. So okay.

So but what I really wanted to understand is so mechanically, or as a matter of bankruptcy law, we have a lease that, in your view, the parties' view is continues and in force as between the City and the debtor and that the plan is going to cause the assumption and assignment of that lease, whereupon it will be modified by agreement between the City and East Broadway Group?

MR. SULLIVAN: Right. I think it's -- I think it's actually Broadway East Group --

THE COURT: Oh, sorry.

MR. SULLIVAN: -- LLC.

THE COURT: Yeah, the new tenant. I'll just say the new tenant.

MR. SULLIVAN: Okay.

MR. KASS: Yeah. Your Honor, I don't mean to step on anybody's lines, but this is Zachary Kass from the New York City Law Department on behalf of the City of New York, if I may be heard on this issue.

THE COURT: Yes, please. Yes. Thanks, Mr. Kass. Nice to see you. Go ahead.

MR. KASS: Thank you. Nice to see Your Honor, as well.

Not to split hairs on it, but I believe it's appropriate to say that the Court's -- well, the stipulation and the Court's prior order that said the lease would be deemed rejected did go into effect. However, I think, at least in the City's view, and I believe in the other parties' view as well, we were relying on those bankruptcy cases in this district and elsewhere that say that the rejection of a lease or a executory contract, pursuant to the Bankruptcy Code, does not automatically terminate all the interests of the debtor in the leased property until and unless the Court so holds.

And again, I think what we've been trying to do is walk that tightrope and say that whatever interest of the

debtor remained after the rejection of the lease, by virtue of the plan provisions, will be assigned eventually to the new tenant. And there are a couple of mechanical steps which will take place in order to get the new lease in place with the new tenant.

But I think, from a bankruptcy perspective, what the Court is being asked to do at this point is approve of the assignment of whatever's left of the debtor's interest in the leasehold, given that there has been a -- I'm sorry, given that there has been a rejection of the lease to the new tenant.

THE COURT: The (indiscernible) order calls it a deemed rejection, right, or is it shall be deemed rejected?

MR. KASS: Correct, Your Honor.

THE COURT: Yeah.

MR. KASS: Correct. That's correct.

THE COURT: Okay. And so does the City view the lease with Broadway East Group, LLC as a new lease or as a modification of an existing lease?

MR. KASS: It's a modification -- well, it's a modification and restatement of the lease.

THE COURT: Okay. Okay. So I think -- well, that's helpful. I just wanted clarity on that.

I will say, I gave some thought to whether a nondebtor plan proponent has authority to assume an existing executory contract, and I think the answer to that is yes. I did some

independent research. Actually, there are some visiting judges in town, and one alerted me to a helpful case. So I'm going to cite it, okay, which is not exactly identical, but as support for the proposition that a nondebtor plan proponent is authorized to assume an executory contract held by the debtor under the Bankruptcy Code.

And that case is In re: Nickels Midway Pier LLC, that's N-I-C-K-E-L-S, Midway, Pier, P-I-E-R, LLC. The citation is at 452 B.R. 156, U.S. District Court of the District of New Jersey 2011. And the specific holding was that the Bankruptcy Code did not limit power to assume executory contracts solely to the trustee or debtor-in-possession, and therefore a Chapter 11 plan proposed by, in that case, a creditor would require debtor to assume an executory contract.

And so I think that's the implicit -- I agree with the analysis of that case, and I think that appears to me to be analytically what's happening here.

Mr. Kass' helpful explanation was that whatever it is that the debtor can -- whatever interest the debtor continues to have in the leasehold interest or the possessory interest in the premises is being assumed and assigned by operation of the plan. And ultimately, assuming the plan goes effective after confirmations are received, then the lease will be assigned to the new tenant as a matter of bankruptcy law, coupled with whatever contractual arrangements are worked out between the

City and the new tenant.

Let me ask if anybody thinks that is a mistaken legal assessment of how this works and what's happening here. I'll invite -- does the new tenant want to be heard on that?

MR. SOONG: Thank you, Judge. This is Arthur Soong for the new tenant Broadway East Group.

I do understand the issues that are being raised. I did want to confirm -- and I do have one of my members here. I do want to confirm that Broadway East Group remains committed and fully prepared to fulfill all the financial and other obligations of the term sheet, of our final -- of our best final bid of April 11th, 2023, our term sheet, which has been filed with the Court on May 18th, 2023, as well as the revised lease, which admittedly is not yet signed but has been negotiated between us and the City and also filed with the court.

We remain fully prepared and fully able to comply with all of the terms. I do understand the issues that are -- the issue being discussed as far as either rejection of the existing lease or an assumption and assignment of the existing lease. And we are fine with the presentation, both of Bank of Hope and by the City. I do also have one of my clients with me in the shadows here.

THE COURT: Okay. Yeah, that's fine. I can see a blurry figure over your shoulder on the Zoom screen. That's

fine. Nice to see you there.

MR. SOONG: (Indiscernible).

THE COURT: And so let's just -- yeah, I don't think I need to hear -- I just wanted to make sure as a legal matter that Broadway East Group understood and did not see a problem with the legal analysis I just articulated. That part was -- you may be neutral, but if you have a problem, please identify it.

MR. SOONG: Thank you, Judge. We do understand, and we have no problem.

THE COURT: Okay. Does anybody else want to raise any concern with the analysis I just described?

All right. I paused, and no one said yes. So that's fine. So I am going to -- this may be a bit of a messy transcript because that articulates my analysis of that issue, and that will be a component of my ruling, ultimately, on confirmation.

So let me ask my other question, Mr. Sullivan, which really is feasibility under 1129(a)(11). And I'm not sure that this is a thing that should give me pause, but I know the effectiveness of the plan is conditioned on ultimately successfully navigating this various City approval requirements. And the proffer tells me those are expected to occur in September, or at least the two hearings are expected to occur in September, which is the current month. So within

fifteen days, I think, is the second one.

And I know it looks like the plan is -- there's a provision that the plan will become null and void in the event required approvals are not achieved unless the parties agree otherwise. So my question is, is that consistent with 1129(a)(11) and the essentially feasibility requirements? And you might tell me not applicable. You might tell me, yes, it's perfectly consistent and here's why. I'm just looking for comfort as to why 1129(a)(11) isn't an impediment.

MR. SULLIVAN: I don't believe it's an impediment, Your Honor. I mean, based on my -- based upon my understanding as to how these hearings go and my understanding of how the City approaches it, I've been told that these hearings are not an impediment, that they hear the concerns of these parties, but they don't necessarily have the ability to veto the transaction.

It may be best if Mr. Kass sort of describes it from his perspective because I think he's a little bit more familiar with exactly how these matters go. But so maybe it would be advisable to let him discuss it.

But my general understanding, Your Honor, is that everyone involved in the transaction fully expects that the lease will be signed shortly after those hearings and that nothing that takes place at those hearings should pose any type of impediment.

THE COURT: Okay. So I'm happy to hear from Mr. Kass. But first, so I'm hearing what you're saying is that I should conclude that it's at least sufficiently probable that the required approvals will be achieved. You're just in the course of a governmental review process, and that given that, there's a sufficient likelihood that I can conclude that the plan will succeed, will be successfully effectuated as designed. Right. That's basically the --

MR. SULLIVAN: Correct, Your Honor.

THE COURT: -- conclusion you want me to make? Okay.

Mr. Kass, you here? You're not visible to me on my screen.

MR. KASS: Yes. Again, Zachary Kass, on behalf of the City. I apologize, Your Honor, again for my computer problem. So in order to retain the voice portion, I did have to turn off my camera.

THE COURT: Okay. That's fine.

MR. KASS: So I apologize. However, I agree with Mr. Sullivan that the current approval process that the City is engaged in should not be considered a process that will make the plan not feasible at this point.

I know that -- what has happened in prior cases, as they say on late-night television, doesn't necessarily ensure the same results in these cases. But there have been several cases in which bankruptcy courts have allowed the parties to

confirm a plan which envisioned this dual track, in other words, that bankruptcy court approval was necessary as well as certain governmental approvals were necessary.

And the fact that the governmental approval process would take somewhat longer than the bankruptcy process didn't affect the feasibility of the plan, per se. The bankruptcy courts, again, at least in those cases, were able to say that the provisions of the plan, the transactions envisioned by the plan, were appropriate and rational and capable of fruition. And so that, having an approval process that would take -- that was on a longer runway was not a feasibility issue.

THE COURT: Okay. Thanks. I'm going to ask you an unfair question. (Indiscernible) it's not unfair. You may not be -- I'm going to ask you a question you may not be able to answer. How quickly are the remaining reviewing governmental entities, I think it's two stages, likely to decide?

MR. KASS: Well, we are hopeful that -- the borough board is scheduled for September 21st. We're hopeful that the borough board will act, either at that meeting or shortly thereafter.

The mayoral hearing is then scheduled for -- the mayoral approval hearing is then scheduled for September 27th. Again, we're hopeful that the approval will be obtained, either at that hearing or very shortly thereafter. Once that approval is -- the mayoral hearing approval, once that is in place, then

it goes to the mayor's office of contract services for the mayor to sign off on, and that process can be done fairly quickly. I was told yesterday afternoon that it can be done in a day or two. But it seems to me that a time frame of another week after the mayoral hearing approval -- of a week would be realistic time frame.

So again, Your Honor pointed out that with the current schedule, it's about fifteen days. And then the mayoral approval within the next -- give it a week should be obtainable. And at that point, it should be possible to have the plan go effective.

THE COURT: Okay. Got it. Okay. I think that covers my question with respect to the effect of the ongoing City review process and its interaction with Section 1129(a)(11).

Mr. Sullivan, is there anything else you want to cover, any other argument you want to present, before I open the floor to others?

MR. SULLIVAN: I don't think so, Your Honor. If anyone has any other concerns, I'm happy to address them at that time.

THE COURT: Okay. Let me just go -- I'm going to save debtor for last, because debtor is the only party who objected, and so I'll give Ms. Keenan an opportunity to speak.

We've already heard from Broadway East Group and who used the opportunity to state support for the plan and

continuing to stand by the transaction as negotiated some months ago. So Mr. Soong, anything else you want to add?

MR. SOONG: No, Judge. I'm good.

THE COURT: Okay. Thanks. And let's see.

Mr. Bruh, anything you want to be heard on at this point, with the understanding we're reserving with respect to issues regarding the retention of the plan administrator, which, I have on my punch list, constitutes exculpation or equivalent provisions pertaining to that person, plus the 503(b) issues that were discussed.

MR. BRUH: Right. Okay. So Your Honor, Mark Bruh for the United States Trustee. It's the 503(b) issue. We have the plan administrator you just mentioned. There's some minor things I'm sure I could work out with Mr. Sullivan and the plan administrator.

I haven't thoroughly read the confirmation order, but I did notice that there was -- and I thought it was resolved about the treatment of late-filed claims, and I'll go over that with Mr. Sullivan. But I think there's something where they would be deemed late, not disallowed, but late. And if they wanted to be timely --

THE COURT: Right.

MR. BRUH: -- the motion would be made. And I just want to make sure that that issue makes it into the order.

THE COURT: Yeah, I want that to be conformed with the

fourth amended plan as revised because that, I think, had appropriate language. That was an issue I previously ruled on.

MR. SULLIVAN: Yeah, I believe we -- I believe the version we submitted to Your Honor, I believe, addressed Mr. Bruh's concern. The draft that I had sent him had some unclear language in it, which hopefully we've resolved.

MR. BRUH: And at this time, Your Honor, that is it. I'm sure if there's anything else, I have been talking to Mr. Sullivan, and we could resolve anything in connection with the confirmation order. But thank you.

THE COURT: Okay. Thank you. So does that mean -- I want to just translate that to procedurally. So it sounds like the Office of the U.S. Trustee considers its prior objections to the plan as voiced at the time of the disclosure statement to be resolved. And we're down to the 503(b) issues and the exculpation-like treatment of the plan administrator and maybe a couple of other things that are small issues that you think you're going to resolve offline; is that right?

MR. BRUH: That is correct, Your Honor. Thank you.

THE COURT: Okay. So I'm hearing no need for argument from you on plan issues at this time.

MR. BRUH: No, Your Honor.

THE COURT: Okay. Thanks.

Okay. Is there any other party besides the debtor who wants to be heard on confirmation today?

Okay. Let's come around to Ms. Keenan on behalf of the debtor. Ms. Keenan, I reviewed your objection, and I just want to give you an opportunity to be heard however you wish.

MS. KEENAN: I'm on. Okay. I just had a limited objection, actually, and they have addressed the approval process. I had gone on the New York City website and basically took what the process is as disclosed on the website.

A mayoral hearing is a term that wasn't used. I'm presuming it's one of the processes that are mentioned in the uniform land use review procedure. Because normally, I thought that the mayor would be at the end, but the descriptions were much different than what Mr. Kass has said.

And I just want to -- with the understanding that there's going to be no signed contract or lease until this process has been concluded. I just want to confirm, is the City planning commission review and the City council review is part and parcel with the mayoral hearing? I don't know the answer because again, mayoral hearing was not in the City's website when I was reviewing it.

THE COURT: Oh, Mr. Kass, maybe you can just come back and clarify, although I think you did. But let's just make sure we have it right and whether or not what was described exactly aligns with the website, I don't know, is the driver for confirmation.

But Mr. Kass, let me just recap. I have absorbed that

both from the papers and your oral comments that there are two remaining things that constitute hearings or that get characterized as hearings. One is September 21st. One is September 27th. And if you secure approvals, as you hope you will do, then there needs to be a final mayoral review and approval, which you are hopeful but can't guarantee will happen pretty soon after the second of those two events. Do I have all that right, Mr. Kass?

MR. KASS: Zachary Kass on behalf of the City. Yes, Your Honor, you're exactly right.

If I may comment just briefly on Mr. Keenan's --

THE COURT: Sure.

MR. KASS: -- query, I have been in touch with the City's representatives, Matthew Berk, who is be one of the people most fully familiar with both the relationship with East Broadway Mall and the way that property dispositions occur, is on the line. But it has been explained to me that the procedures under the uniform -- well, what it referred to as ULURP that Mr. Keenan just referred to, those procedures are not necessary to the current transaction. So we will not be going through the ULURP procedures. And that may be the source of the confusion that the debtor is expressing.

And therefore, the only remaining steps that the City believes are necessary are again, approval by the borough board and then mayoral approval, which does require a public hearing

prior to that -- well, to that procedure.

THE COURT: Okay.

MS. KEENAN: Okay.

THE COURT: Got it. I just want to say for the record that I recall from a prior -- at a prior hearing asking if this required ULURP, that's all-caps U-L-U-R-P, review and approval and Mr. Kass reporting the answer was no. So the reason I'm making this observation is so that the record is clear that that that information was shared at an earlier date and hasn't just been sprung on anyone at this late phase of the case.

MS. KEENAN: Yeah.

THE COURT: Okay. So I think that's -- I think that's the procedural information that Ms. Keenan was looking for. And it certainly, I think, is adequate for confirmation purposes.

So let me turn back to Ms. Keenan and see if you had any other objection or position you want to express on behalf of debtor with respect to the request for confirmation of the Bank of Hope plan.

MS. KEENAN: No, that was my concern. And I had raised it. And I don't recall Mr. Kass saying it wasn't a ULURP program, so I stand corrected.

THE COURT: Okay. Great. Anything else you want to add?

MS. KEENAN: No, not at this time. It's good.

THE COURT: Okay. Okay. That's great.

Let's see. I think I'm going to come back to Mr. Sullivan. I think that we're at a point where it's appropriate for me to rule with respect to confirmation, unless there's anything else that Bank of Hope wants to raise.

MR. SULLIVAN: No, Your Honor.

THE COURT: Okay. Oh, I'm going to make an oral ruling, but then, I haven't had a chance to carefully review the proposed order that Bank of Hope submitted very shortly before this hearing commenced.

Do you want to walk me through it, Mr. Sullivan, in case problems jump out at me? Or do you want me just to -- it seems like there's some moving parts, you're having some further discussions, maybe with the U.S. Trustee, and the thing to do is just wait and let me conduct my review after everybody's on the same page about it. But how do you want to handle that?

MR. SULLIVAN: That make senses, Your Honor. We could submit -- maybe what we could do, make sure that all the comments that we hear today, we'll incorporate them into another form of order. Hopefully, there won't be too many changes. And then maybe what we could even do is attach the form of plan administrator agreement that hopefully we are able to come to an agreement on, and then Your Honor can approve that as part of the order. I don't know if that makes sense or

not, but that may be one way to do it.

THE COURT: Okay. I think that's fine.

So let me turn to my oral ruling with respect to your request for confirmation of the plan proposed by secured creditor Bank of Hope in the bankruptcy of East Broadway Mall.

I'm going to confirm the plan with a few provisos or things that need to be buttoned down, or maybe I'll call it conditions, as follows.

First, as the record makes clear, the plan requires appointment of a plan administrator. The agreement by which the plan administrator is to be retained has not been finalized, and some concerns have been raised about it in discussions between Bank of Hope and the Office of the U.S. Trustee and possibly with the contemplated plan administrator, him or herself. I think it's himself. That process is ongoing, and my approval of the plan is subject to an acceptable resolution of those ongoing discussions with the terms of retention of the plan administrator.

What is to happen is the debtor and the plan administrator and the U.S. Trustee's office are to continue discussing the issues that have been raised in an attempt to reach agreement on those. And then if the timing works out, I would suggest that the debtor do just what Mr. Sullivan said, which was submit the resulting agreement along with a revised version of the proposed order of confirmation. This definitely

should be on notice to all parties and interest, specifically including debtor, and with a redline reflecting changes to the current proposed order.

And then I will allow parties, let's say, two business days to either express consent. I'll appreciate it if you know you consent to come to me sooner, but you'll have at least two business days to raise any objections. I guess, theoretically a person could ask for more time on top of that within that two-day window, but I'm hopeful that won't occur. At which point, I will -- and you may as well also send me the proposed revised confirmation order and agreement at that time, assuming you have it, in your view, ready. That will give me more time to review it to make sure I'm satisfied because I haven't closely scrutinized the actual proposed order yet. And I will be working at the same time that other parties-in-interest have an opportunity to raise any concerns.

So that way we won't lose time. We'll get to the finish line quickly if all goes as contemplated. And if any concerns are raised, we'll figure out what to do, which may take the form of a resumed hearing or something else. Okay. And if I have concerns, I'll reserve the right to just unilaterally modify your agreed-upon work product or else convene us to discuss. Okay. So that's how I'll handle that.

Subject to that loose end and that process, I've reviewed, really, the entire docket of the case. I've

considered the proffer submitted on the record today representing what would have been the testimony of Andrew Park, a representative or employee of Bank of Hope, if required. I accept the factual representations that have been made, again, with the proviso that I'm just focusing on the factual representations. And I conclude that subject to nailing down the issues I just described with regard to the plan administrator, the plan, which is the fourth amended plan, possibly with further forthcoming slight modifications, satisfies all the requirements of the Code that are applicable and should be confirmed.

To the extent there are any remaining objections, they're overruled. I note that no one filed any objection, except that the U.S. Trustee carried over objections from the disclosure statement that went to plan confirmation issues, and those have been consensually resolved, subject to our discussion earlier on the record regarding exculpation, but for the remaining issues involving the plan administrator.

Further, I note Ms. Keenan, on behalf of debtor, had a limited objection that I think she said on the record was satisfied by the description of the workings of the remaining City review process. That's yet to come. To the extent there's any remaining objection, it likewise is overruled for reasons that will be implicit in my review of the Code confirmation requirements.

So let me quickly just go through the governing legal framework and state my own bases for concluding that the applicable plan requirements have been satisfied here.

First, the general legal framework is that Section 1129 of the Bankruptcy Code governs confirmation of a proposed plan of reorganization. Pursuant to Section 1129 of the Bankruptcy Code, a court "shall confirm a plan only if" -- and then omitting a few words -- "one, the plan complies with the applicable provisions of this title, U.S.C. Section 1129(a). This provision has generally been interpreted to require that a plan comply specifically with Sections 1122, governing classification of claims, and 1123, regarding the contents of a plan under the Bankruptcy Code."

I therefore, first, will turn to Section 1122, which governs classification. A plan must contain -- excuse me, a class under a plan must contain claims or interests that are substantially similar to each other. First, for secured claims, each holder often is in a class by itself, unless there are multiple secured creditors who share in the same collateral and have the same priority in that collateral. And then for unsecured creditors, they must be basically alike. Controversy can arise when unsecured claims or interests are substantially similar but split into different classes or are similarly or substantially different, yet are grouped together.

Here, we don't have any of these problems. The plan

has a very simple classification system that Mr. Sullivan has explained, as have his papers, and no party has raised any objection to them. And the Court is satisfied that they are logical groupings of substantially similar claims that correlate to the necessities of this case and the plan and the treatment of claims under the plan.

Turning to Section 1123, that section includes both mandatory and permissive contents of plans under, respectively, 1123(a) and 1123(b). So first, 1123(a) requires that a plan must contain certain things, and I've concluded that all of these requirements are satisfied here.

First, plans must classify claims or interests other than with certain exceptions. Here, the plan does that.

Second, the plan must specify which classes are impaired or unimpaired. The plan does that.

Third, the plan must specify treatment of the impaired classes. The plan does that.

Fourth, the plan must provide for the same treatment for each member of a class unless a class member agrees to less favorable treatment. That has been satisfied here.

I note that the plan is premised on and relies on quite meaningful concessions by specifically Bank of Hope and the City with respect to secured claims and administrative claims respectively, and obviously those two parties are have not only agreed to less favorable treatment, but they're

proponents of a plan that provide them less favorable treatment. So that's fine.

Okay. Fifth, a plan must provide adequate means of implementation, including funding of distributions to classes. Again, the financial concession and the commitment of the contemplated new tenant Broadway East Group, LLC are invaluable and really the keys to the successful achievement of a confirmable plan here because there's an infusion of new capital that Bank of Hope has demonstrated provides adequate means of implementation of the plan, including funding of all administrative costs of the estate and then also of funding of distributions under the plan.

The sixth requirement of 1123(a) is not applicable here. There is simply no contemplated issuance of nonvoting securities and no issues raised here regarding voting power.

The seventh requirement of 1123(a) is that when selecting officers, directors, or trustees of the successor entity, the plan has to use a method that's in the interests of creditors, equity holders, and the public. That requirement is met here in the form of the selection and assignment of responsibilities to the plan administrator. And there's been no holding that -- or there's been no showing calling that into question.

Let's see. There's a requirement that where a debtor is an individual, the plan has to provide for the dedication of

earnings for personal services and other future income is necessary to implement the plan. That's simply not applicable here.

Okay. And so to recap, and if I've omitted any specific sub-provisions of Section 1123, I've concluded that all are satisfied, including for the reasons I just stated.

Turning to Section 1123(b), which sets forth permissive contents of plans, things that a plan may do, although they're not required, plans may, among other things, impair or leave unimpaired any class, assume, reject, or assign executory contracts, subject to Section 365.

I'm going to pause on that permissive element to note that the colloquy I had with parties and my ruling stated earlier is incorporated in this, that the plan calls for assumption of whatever remaining leasehold or tenancy interest the current debtor has in the premises at 88 East Broadway, the mall premises. And the plan contemplates the assumption and assignment of those to the extent not extinguished so as to permit the City and Broadway East Group LLC to enter into its new leasehold agreement, which I will not characterize more precisely. Guard against inadvertent error.

I have specifically concluded that that's both permissible under the New Jersey case that I cited earlier today and an appropriate exercise of discretion and a constituent component of the plan here, in fact, a necessary

component of for achieving the plan that's being presented here today.

I don't think I need to go through a punch list of permissive contents of a plan. Suffice it to say that I've identified nothing impermissible or unacceptable within the plan that would run afoul of or exceed the scope of that which is permitted under 1123(b) or that would fail to satisfy the mandatory requirements of 1123(a).

Then, turning to the further requirements for confirmation as set forth in Section 1129 of the plan, first, generally the burden is on the plan proponent here, Bank of Hope, to demonstrate compliance with Section 1129 by a preponderance of the evidence. In re: Ditech Holding Corp., 2019 Westlaw 4073378, *3 (Bankr. S.D.N.Y. August 28, 2019).

There are sixteen specific requirements to confirmation set forth in Section 1129(a). I won't list them in the interest of time. But I've reviewed the plan, and I'm satisfied that all are met here.

First, I've already discussed at some length that the requirements of Section (a)(1) are met because the plan complies with applicable provisions of the Code, which courts construe by focusing on Sections 1122 and 1123, as I have just done. See 7 Collier on Bankruptcy Paragraph 1129.02. That's pulled from the sixteenth edition from 2019. See also In re: EnviroSolutions of New York, LLC, 2010 Westlaw 3373937, *2-3

(Bankr. S.D.N.Y. July 22, 2010).

Section 1129(a)(2), again, requires that the proponent of the plan -- proponent of the plan must comply with applicable provisions of the Code. I've already ruled that that requirement has been met here.

1129(a)(3) says the plan must be proposed in good faith and is by no means -- and is not forbidden by law. Good faith is not specifically defined in the Code, but courts interpret it to mean that, among other things, there's a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. See In re: 20 Bayard Views, LLC, 445 B.R. 83, 95 (Bankr. E.D.N.Y. 2011).

Here, there's been a showing that that that requirement has been met, and I specifically find that that requirement has been met. Debtor at various times in the case has voiced concerns or objections that the City has failed -- I'll just speak colloquially -- to give the -- that the City has failed to give the debtor a fair shake or a fair opportunity.

I specifically find that the record is inconsistent with that contention sometimes voiced by debtor, that, as I noted earlier in the record, this case has been pending since 2019. There's been extended periods of time allowed for debtor to seek to develop a confirmable plan, and debtor has never

done so. The City has explained on prior occasions that it had concerns, including about debtor's ability to achieve reliable financing that would be of sufficient duration and size to allow it to successfully operate again. And the debtor -- and the City has explained that it has concluded that the best and highest possibility is to work with the Broadway East Group as a new tenant. The Court concludes that that is a decision that was made following ample opportunity for debtor to develop an alternative and is made in good faith by both the City and Bank of Hope as plan proponent.

Section 1129(a)(4) requires that any payment made or to be made by the proponent, by the debtor, for services or costs and expenses in or in connection with the case or in connection with the plan and incident to the case has been approved by or is subject to the approval of the Court as reasonable.

That, I believe, has been shown to be established in all respects, except that the U.S. Trustee's Office has some remaining concern about that. I think, in context with the plan administrator, limited to that, and that is a subject of ongoing discussion. But for possible issues there, that showing has been made. And specifically, the plan provides for payment of allowed administrative expenses. To be an allowed administrative expense requires court approval. And as the Bank of Hope notes, there have been administrative bar dates

set and that there's a third one set so that later rising expenses are again to be submitted and reviewed and approved by the Court. So that provision is satisfied.

Section 1129(a)(5) requires that a plan proponent disclose the identity of any individual who will serve as director, officer, or a voting trustee. And here, the plan supplement identifies the plan administrator and its terms, again, subject to finalization of the terms of the actual agreement and remaining open issues.

1129(a)(6) is inapplicable here because that concerns the jurisdiction of governmental regulatory commissions, which aren't implicated in this case.

Section 1129(a)(7) requires that with respect to each class of impaired claims or interests under a plan, every holder of a claim or interest either accept the plan or receive or retain property of a value not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. As Bank of Hope's brief notes, this is often called the best interests test. Here, that test is satisfied.

With respect to each impaired class of claims or interests, each holder of a claim, other than, I guess, debtor, who's deemed to reject the plan, has accepted the plan or in the case of interestholders, will receive or retain under the plan property of a value that is not less than the amount such

holder would receive or retain if the debtor was liquidated under Chapter 7 of the Bankruptcy Code.

The legal vocabulary that sometimes gets applied is complicated, but the bottom line is we have plan proponents who have consensually advanced the plan, are funding it, and stand to benefit under it. They are all senior in line to the debtor, who is an equity interest holder, essentially, in the plan and -- actually, I'm not sure the organizational structure of the debtor, but they are an owner -- at most, they hold an ownership interest in the debtor itself.

And the plan calls for liquidation of debtor, but there is no possibility, no realistic possibility, that a Chapter 7 liquidation of the debtor would achieve any amount of proceeds that would inure to the benefit of the debtor itself to a greater extent than is being achieved by the plan. So the best interest test is satisfied here. And in fact, as the Bank of Hope notes, in addition to liquidation outcomes being equivalent under Chapter 7, there would be additional fees, costs, expenses, et cetera that would push the debtor even further underwater. I think that's a correct contention.

Turning to Section 1129(a)(8), that section requires that each of class of claims either accept the plan or not be impaired under the plan. Here, the ballot results have been reported, and I credit the reports of the balloting. There have been no ballots cast opposing the plan. And multiple

classes have voted in support of -- excuse me, multiple impaired classes have voted in support of the plan, I think, including 1 and 4(a) and 4(b). Possibly I'm misspeaking because I'm not looking back, but there have been -- there's been a clear showing that balloting results demonstrate support for the plan.

Yeah, specifically, and I'm referring back to the proffer that was delivered earlier today, which in turn relies on the certification of ballots, Classes 1, 2, 3(a), 3(b), 4(a), and 4(b) have accepted the plan or are unimpaired and deemed to accept. And there are simply no Class 4(c) members, although the plan was drafted to include a Class 4(c), because no one elected to receive Class 4(c) treatment, which that was an opportunity that creditors were given to receive so-called convenience treatment under the plan.

Class 5, which is interests as opposed to creditors, is deemed to have rejected the plan because the class is not receiving or retaining any property under the plan. But the plan does not discriminate unfairly against Class 5 in that the interests within Class 5 are dissimilar to other classes, and further, plan's segregation of Class 5 has a rational basis, that it silos or groups holders of claims that fall in a different place in the seniority scheme and have different entitlements and lesser entitlements to distributions then creditors. Further, classes senior to Class 5 are not

receiving more than the full value of their claims, and therefore there is no entitlement of Class 5 members to receive or retain any property under the plan.

Therefore, the fair and equitable standard Section 1129(a)(8) has been satisfied.

Section 1129(a)(9) requires that holders of certain types of allowed priority claims must be held -- must be paid in conformity with the Code unless they've agreed otherwise. Here, again, that requirement is satisfied by the plan.

Section 1129(a)(10) states that if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider. The Bank of Hope has shown that this requirement is satisfied, again, because impaired classes, including 1, 4(a), and 4(b) all have accepted the plan.

Section 1129(a)(11) was something I focused on earlier today during the hearing. That requires that confirmation of the plan not be likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

First, the Bank of Hope has made a substantial showing of the financial viability of the plan, including the securing of new financing and capital infusions from the new tenant and

mechanisms to satisfy, among other things, the payment of all administrative expenses of the estate, as well as other obligations, and to secure a new commitment from a robust tenant who the City has concluded, as landlord, is well positioned and likely to successfully operate the facility moving forward.

The Court finds that these are reasonable determinations and satisfy the financial -- make a sufficient showing of the financial robustness of the proposed plan that Section 1129(a)(11) is satisfied.

I did raise a question whether the condition on effectiveness of the plan of completion of the ongoing City review process was consistent with the requirement that I -- the required finding that I must make under Section 1129(a)(11). I conclude that that standard is not terribly high, for reasons set forth in the moving brief, and that there is a reasonable likelihood that that process will successfully culminate and result in realization and finalization of the plan as contemplated.

Further, the plan has mechanisms for the parties to negotiate and attempt to modify or reach other agreements in the event those approvals don't come through as contemplated. The parties didn't brief the -- didn't specifically identify authority approving plans with similar post-confirmation conditions to effectiveness in the form of governmental

approvals.

Before the hearing, I looked at the history of the American Airlines bankruptcy, which was obviously a major, major case that culminated with the merger of American Airlines and then US Air. That plan was confirmed, even though there was a pending antitrust lawsuit and antitrust review that was required before the merger could be consummated. I think that is an analogous type of post-confirmation governmental review that in that case, as here, was potentially highly consequential and yet was not an impediment to confirmation under 1129(a)(11).

I'll note that the City also, through Mr. Kass today, made reference to a number of other cases where courts have approved and confirmed plans subject to completion of what can be rather lengthy tracks of governmental review.

So I think I'm satisfied that 1129(a)(11) is met.

Turning to Section 1129(a)(12), that requirement is satisfied because the plan provides for payment of all fees payable to the Office of the U.S. Trustee.

And for various reasons set forth in the papers, I won't elaborate on the requirements of Sections 1129(a)(13), (14), and (15) are not applicable, and therefore -- Bank of Hope puts it "are deemed satisfied". I'm not sure if that's really the right wording, but I will say they are not -- because they're not applicable, they are not impediments to

confirmation. They are, I think, requirements that apply where applicable, and they're not here.

Turning to Section 1129(a)(16), that subsection requires that all transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or a trust that is not a moneyed business or commercial corporation or trust. To the extent applicable, the plan is contingent on successful completion of the City's transactional review process, and that's the only potential applicable process that anyone has raised or identified. And so I conclude that section is satisfied.

Okay. Turning to remaining provisions, having just completed the review of the long list of requirements of 1129(a), Section 1129(b) is also satisfied. That's a somewhat involved provision. There's been no contention or dispute raised regarding or pertaining to 1129.

I'll note that debtors have shown that the classifications involved are appropriate, Class 5 is dissimilar to all other classes, and that there's a rational basis for the grouping raised because Class 5 and only Class 5 consists of interests, and it doesn't consist of any other types of parties-in-interest in the case or creditors.

Further, the plan does not discriminate unfairly among the rejecting class or against the rejecting class, and this

satisfies the requirements of Section 1129(b).

Further, there's no class junior to Class 5 that is to retain or receive any property under the plan, again, demonstrating compliance with Section 1129(b), and in fact, no party has claimed that there's unfair discrimination or that the plan is not fair and equitable in how it treats creditors and interestholders.

Section 1129(c) is satisfied. That permits the Court to confirm only one plan. What's before the Court is the only plan that's even been presented at this time and is subject to approval. Debtor had previously proposed a plan some time ago that the Court determined was patently unconfirmable, and so that proposal did not progress beyond the disclosure-statement stage.

Mr. Park testified credibly that the plan does not have, as one of its principal purposes, the avoidance of taxes or avoidance of requirements of securities laws. So the Court concludes that Section 1129(d) is satisfied.

I think that completes Court's review and its articulation of the bases for its holdings that all requirements for confirmation of the plan have been satisfied here, and the Court therefore will confirm the plan, subject to the reserved issues described at the start of my ruling and the procedures described at the start of my ruling, which are that debtor is to continue talks specifically with the U.S. Trustee

and please, if anyone else has any issues they want to raise with respect to your proposed order, please consider those as well. Then, the debtor is to also seek agreement with the Office of the U.S. Trustee regarding the open issues involving plan administrator and any other open issues to be referred to as small matters, the issues he described as small.

Once that's done, the debtor is to submit a revised proposed order confirming the plan, along with a revised proposed plan administrator agreement, and then any other related documentation that the Court should see. In fact, I think what you should do is docket those in redline form and clean form and alert chambers that they've been submitted. Then, any party-in-interest will have until the second business day following the docketing of those documents to raise any objection or concern.

If everyone happens to consent before that time, let Chambers know. I'll appreciate the courtesy, and I'll maybe be able to approve it without waiting that extra day or two. In the meantime, I will use that available time to conduct my own review of the revised documentation, and if I have any concerns, I'll either unilaterally act or reconvene us to figure out what we need to do next or raise any questions I have.

Okay. Let me ask Mr. Sullivan If I have either misstated anything or failed to cover anything I need to do

today.

MR. SULLIVAN: No, Your Honor. I appreciate all the time that you've taken to go through each of the points, and I think you covered everything.

THE COURT: Okay. Great. Let me just say, by way of --

MR. BRUH: Your Honor, may I just speak here? Mark Bruh for the --

THE COURT: Yeah. Go ahead, Mr. Bruh.

MR. BRUH: Sorry. Mark Bruh for the United States Trustee. I apologize for interrupting.

It's the 503(b) issue. I just don't know how the Court wants to handle scheduling that. Is that going to be argued later or are we -- I'm fine if you just want to take it on submission. I don't know how Mr. Sullivan --

THE COURT: I'm going to -- I think you're -- well, tell me what makes sense. I had envisioned -- I had understood there would be discussions and possible moves to satisfy the U.S. Trustee's office's concerns or a possible consensual outcome, in which case I'll just look at it on submission. If not, I guess if there's a remaining disagreement that needs to be argued, we could either argue it right now, or we could wait and see further discussions and whether that bears fruit and then reconvene later if needed.

What do you think makes sense, Mr. Bruh?

MR. BRUH: I think Mr. Sullivan and I have a differing view on the 503(b) issue. It's been hanging out there for quite some time, and there's really been no progress on it. So we could either argue it or just --

THE COURT: Okay. Give me your --

MR. BRUH: I don't know --

THE COURT: -- articulation of what the 503(b) issue is exactly.

MR. BRUH: I think, so we did preview our argument at the last hearing, and we put in our objections. I think pretty clear that we believe the proposed payment to the bank is a substantial contribution claim under 503(b). I believe that it -- we believe that it needs to make a showing in order to be paid, and it has to be done by notice and a hearing and with approval of the Court. And that is not done here, Your Honor.

Also, with respect to the cases cited by the bank, we believe they're distinguishable to the facts of this case. Those were findings under a global settlement or that the payments weren't in violation of 1129(a)(4), which we believe would not be the case here because there is a portion of the payment to be made by a plan proponent.

THE COURT: Wait, I'm sorry. Your audio drifted off again. Give me that last sentence.

MR. BRUH: I said that we believe that the facts of this case are different than those cases cited by the bank in

its moving papers -- or excuse me, in its reply to our objection, that in those cases there was a global settlement for approval of the fees of the applicants, and the Court's made a finding that those payments were not in violation of 1129(a)(4). And 1129(a)(4), it states that it's a payment to be made by a proponent or by the debtor, and it's subject to approval of the court as reasonable.

I mean, I can go into how we find this case is different here, but we believe that the debtor -- excuse me, debtor, I keep saying debtor -- that the bank should make an application and Your Honor should review the fees, just deem them appropriate in the case.

THE COURT: All right. Mr. Sullivan, you want to respond?

MR. SULLIVAN: Yes, Your Honor. Yes. As we kind of mentioned earlier and as pointed out in the papers, the situation here is a little bit different than your usual case. Right. We have an agreement amongst the City, the bank, and Broadway East Group to cover any administrative expenses and priority claims that may need to get paid. And we're going to split it three ways.

And so the understanding is that if we can reach an agreement as to the administrative expenses in order to propose and consummate and implement the plan, which are primarily the expenses incurred by my firm to -- for the legal expenses, then

we wouldn't need to bother the Court with trying to have a hearing on it when there's really just an agreement amongst the parties are basically resolving that and that we would only need to bother Your Honor if the parties, for whatever reason, could not agree.

THE COURT: Oh, yeah. No, look, particularly if -- I mean, your firm has done a lot. My reaction is that, notwithstanding the funding agreement that's occurred here, what's being done is payment to your counsel through the auspices of the bankruptcy process and the bankruptcy case for work done in connection with the case, and that does strike me as falling within the terms of Section 1129(a)(4), which requires that payments for services and costs in connection with the case be approved by the Court is reasonable. Right.

That's the concern you've got, Mr. Bruh? And then you've got -- in addition, I guess we have the substantial contribution issue?

MR. BRUH: Correct, Your Honor. It's both. They're related. Yes.

THE COURT: Yeah. So I think that the treatment -- yeah. I will just say that my tentative view, maybe not that tentative, is that the U.S. Trustee's office is right, that notwithstanding the funding arrangements, entitlement to payment still needs to be established and subject to court review, both with respect to just the general fee application

processes and with the required showing of substantial contribution because the fees were incurred by a party other than the debtor or the Trustee.

That said, I think the Bank of Hope has a very robust case for a substantial contribution finding because it came in and really kind of spearheaded the achievement of a confirmable plan at a time when that was looking like a real long-shot.

So let me first ask Mr. Bruh, that's the ruling you're looking for, right?

MR. BRUH: Yes, Your Honor. I mean, I think there should be (indiscernible) --

THE COURT: Okay. Yeah, you don't have to elaborate.

Let me just ask Mr. Sullivan, I'll give you another shot to persuade me that's wrong. I'll say nothing further. I'll give you another shot to persuade me why that's wrong. But I understand that you're trying to distinguish the circumstances here and the money's coming from wonderful settling parties and you've achieved a great result, and yet I just don't see why that justifies an end run around the requirements that Mr. Bruh raises and identified.

MR. SULLIVAN: Right. There's two things, I guess, I would respond to that.

I mean, to some extent, Your Honor, when the parties negotiated this deal, Bank of Hope agreed to kind of incur the expenses, subject to reimbursement. Right. We could have

probably had each of the three parties sort of contribute along the way, or we could have readjusted the allocation under the plan, such that Bank of Hope would get a larger distribution, instead of, like, let's say, two million or whatever the number is. I forget the exact numbers that are going to each party. But maybe a little bit more go to the Bank of Hope, a little bit less go to the City, and maybe the approved new tenant kicked in a little bit more money on the purchase price. Right.

So all of these things are sort of fungible to some extent, but the way that it was negotiated, just the cleanest way to make it easier, to make it seem the most fair, that each of the parties were sort of bearing some of the responsibility for the cost going forward, this is the way we sort of struck it. But it certainly could have been negotiated a different way, given that money is fungible.

THE COURT: Yeah, let me say, I'm having -- well, sorry, maybe that's one of your -- I think you said you maybe had a couple of points, and this was one. I'm not --

MR. SULLIVAN: Yeah, that was the first point.

THE COURT: -- (indiscernible) that one because sure, you could have -- I mean, any manner of structures and deals could exist, but this is the deal you've got. And it entails payment of your expenses, which really seems to fall within the statutory language.

MR. SULLIVAN: I understand, Your Honor. We were just trying to, like -- we were trying to simplify the process. We're not necessarily --

THE COURT: Okay.

MR. SULLIVAN: -- like I had mentioned to Mark, we were willing to let you call it and live with it. It wasn't a deal-breaker. The --

THE COURT: Okay. Well, look, I think that's where I'm at. But I think you had one arrow in your quiver remaining that you wanted to roll out --

MR. SULLIVAN: Yeah, the one --

THE COURT: -- so what's that?

MR. SULLIVAN: The one other I just wanted to mention is, is that we did submit an administrative claim through, I believe, the second bar date. Right. So to the extent that Your Honor is willing to rule on that part of it and we can get approval of that aspect of it at this point, and then we can always apply for additional expenses as part of the third administrative bar date --

THE COURT: Got it. Let me tell you --

MR. SULLIVAN: -- at a later date.

THE COURT: -- I'm not going to -- I'm not going to do that at the time of confirmation. If you want to seek approval on a rolling basis up through that amount, I'll get you heard pretty quickly.

I'm not sensing from Mr. Bruh that he smells a rat or thinks that your firm didn't make substantial contributions. But I know this is a programmatically important thing for his office. And I think honestly, it's a programmatically important thing for the Court, too. The Court needs to maintain control of expenditures and disbursements running through estates on account of professional fees, and particularly if it's -- and then also just to ensure that the substantial contribution standard is met I think is right.

So basically, you can submit an application whenever you want, but I'm not going to -- I don't intend to or want to use confirmation as a mechanism to evade those requirements. So I guess that's my ruling. Okay.

MR. SULLIVAN: All right. Thank you.

THE COURT: Yep. Thanks.

MR. BRUH: Thank you, Your Honor.

THE COURT: Mr. Bruh, did I any other issues you've got to raise? I appreciate your raising that one.

MR. BRUH: No, Your Honor. We appreciate it. And Mr. Sullivan, I can tell you, gets me the application, I'll review it as quickly as possible so we can get him comments --

THE COURT: Yep.

MR. BRUH: -- if we have any. You got my word.

THE COURT: I will say, it's been a long case.

MR. BRUH: Yes, Your Honor.

THE COURT: When the money finally becomes available, everyone's done a lot of work, and I certainly think it'll be fair. I'm sure the -- I trust the U.S. Trustee's office will apply fair and prompt review, and I'll do the same. Okay.

MR. BRUH: Yes.

MR. SULLIVAN: Thank you, Your Honor.

MR. BRUH: Thank you.

THE COURT: I think now we're ready to be done. Anyone else need to raise anything?

Yes, go ahead, Mr. Soong.

MR. SOONG: Yes. Thank you. And this will be very brief. But this is an issue that's not new between us and the City, and I wanted to raise it here to see if we can have some assistance on it.

In our final bid and also in our term sheet, and presumably also in the final lease, the new tenant has made a commitment to relocate the existing subtenants so as not to disrupt their business. And we continue to be committed to do that. The problem is that we've not yet been given a list of the current tenants that are in the premises.

The City has told me -- and Mr. Kass, you can correct me on it, but the City has told me that it doesn't have any information about the current tenants. I have instructed my clients to do what it can as far as identifying who appears to be operating right now. But in order for us to plan our

substantial reconstruction and renovation of the space, we need to know how we're going to reallocate or relocate or move around the existing subtenants, to the extent that they are existing subtenants.

And so I'm raising this to see if either the Court or any of the other parties, perhaps the Trustee's office, perhaps Ms. Keenan, can help me. We are looking essentially for a list of the current tenants so that we can confirm or verify that they are indeed the tenants.

THE COURT: Okay. Let me just say, I understand your need for that. That's not really a confirmation issue. I will encourage all the parties to provide information and be cooperative to accomplish this objective. I don't want to get down into the weeds on this, but Mr. Soong, I mean, I don't know. If your client physically goes there, you can stick letters in every unit's door for that matter. But I'll leave that to you.

I think all I should say is whoever has information that will help Mr. Soong do what he says he needs to do, please provide it.

And Mr. Soong, if you need to come back to the Court or your entity needs to come back to the Court, so be it. I don't think that's an issue that's raised for ruling today. Okay.

MR. SOONG: Thank you. Thank you.

THE COURT: All right. So once again, I think we're done, but I'll just make sure. Anyone else want to raise anything?

Okay. I paused. No one said yes. Thank you all for your efforts. Oh, I was just going to start to say, this has been a lengthy and tiring hearing, but I do want to -- and it's 2 o'clock, and I haven't had lunch. I ran through my brief, teeny window to have lunch, and I'm going to go right to something else now.

But I do want to say that I know this case didn't go the way debtor wanted it to go, but I will say this is an important facility to the Chinatown community and the City, and I am very hopeful and glad that through bankruptcy processes you seem to be on the cusp of putting a really solid operator in place and putting this facility back to use where people can be -- in a way that people can be employed, revenue can be generated, including for the City, and the community will have a nice facility as well. Okay.

So thank you for your work and I want to just acknowledge that happy outcome that we seem to be on the cusp of. Okay. So thank you, and we're adjourned.

(Whereupon these proceedings were concluded)

I N D E X

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.

River Wolfe (CDLT-265)
TTA-Certified Digital Legal Transcriber

eScribers
7227 North 16th Street, Suite #207
Phoenix, AZ 85020

Date: September 15, 2023

B

S

72:9;74:7;75:7
1125 (2)
29:22;38:12
1126 (1)
29:22
1129 (8)
21:14;25:23;27:23;
71:5,6;75:10,12;
84:17
1129.02 (1)
75:23
1129a (3)
71:9;75:16;84:15
1129a1 (2)
26:4,7
1129a10 (3)
34:7,11;81:10
1129a11 (11)
34:12;35:11;57:19;
58:6,9;61:14;81:17;
82:10,15;83:11,16
1129a12 (3)
35:12,15;83:17
1129a13 (2)
35:16;83:21
1129a16 (2)
35:19;84:3
1129a2 (5)
26:23;29:5,7,24;
76:2
1129a3 (4)
30:21,22;31:4;76:6
1129a4 (8)
31:6,12;41:7;77:11;
88:19;89:5,5;90:12
1129a5 (3)
31:13;41:8;78:4
1129a6 (2)
32:5;78:10
1129a7 (3)
32:7;33:4;78:13
1129a8 (3)
33:5;79:21;81:5
1129a9 (4)
33:25;34:3,6;81:6
1129b (7)
33:24;36:3,9,12;
84:15;85:1,4
1129c (2)
36:19;85:8
1129d (2)
36:24;85:18
11920b (1)
36:17
11th (1)
56:12
1200 (1)
39:7
1201 (1)
4:22
14 (3)
17:21;35:16;83:22
15 (2)
35:16;83:22
156 (2)
4:4;55:9
15th (1)
15:15
173 (1)
39:14
17th (1)
15:15
183 (1)
12:17
183-1 (1)
12:19
186 (1)
22:5
188 (1)
22:7
189 (1)
29:14
18th (1)
56:13
19-12280 (1)
6:5
1930 (1)
35:14
1933 (1)
37:2
195 (2)
31:15;43:9
198 (1)
30:2
1986 (1)
17:7
1989 (1)
18:5
199 (1)
29:19
1994 (1)
17:22

2

2 (4)
30:10;33:7;80:9;
97:7
20 (1)
76:12
200 (1)
29:19
2001 (1)
17:6
2007 (1)
18:6
2009 (1)
17:11
201 (1)
29:19
2010 (2)
75:25;76:1
2011 (2)
55:10;76:13
2016 (1)
16:18
2019 (5)
14:20;75:14,14,24;
76:24
202 (1)
29:19
2020 (1)
15:9
2021 (7)
15:9,14,15,16,20,
22,24
2022 (4)
12:13;13:4;14:9;
16:2
2023 (7)
21:16;25:15,16;
29:14;30:3;56:12,13
208 (1)
16:18
21 (1)
25:15
215 (1)
16:18
21st (2)
60:18;65:3
22 (3)
12:13;39:7;76:1
22nd (1)
13:3
247 (1)
17:5
25 (1)
30:3
27 (1)
25:16
27th (3)
15:13;60:22;65:4
28 (2)
35:14;75:14
2d (4)
17:6,7,22;18:5

3

3 (1)
43:9
305 (1)
4:22
3373937 (1)
75:25
361 (1)
18:6
365 (1)
74:11
367 (2)
18:6,6
37 (1)
17:10
370 (1)
17:5
391 (1)
17:5
3a (3)
30:11;33:7;80:9
3b (3)
30:12;33:7;80:9

4

4073378 (1)
75:14
42 (1)
17:10
421 (1)
17:10
445 (1)
76:12
452 (1)
55:9
478 (1)
18:5
484 (1)
18:5
4a (5)
33:7;34:10;80:3,10;
81:15
4b (6)
30:14;33:7;34:10;
80:3,10;81:15
4c (6)
30:18;33:9,10;
80:11,12,13

5

5 (22)
21:16;30:19;33:11,
14,15,17,21,23;36:4,
7,13;37:2;80:16,19,
20,21,25;81:2;84:19,
21,21;85:2
503b (11)
39:12,15;42:20;
49:6;62:10,12;63:15;
87:12;88:2,7,12
534 (1)
4:14
552 (1)
16:18
56th (1)
4:4
58 (1)
17:7

6

6 (1)
16:24
60b (3)
14:2;17:8,15
60b3 (8)
12:8;14:7;16:20,24;
18:1,15;19:3,3
60b6 (4)
12:8;18:23;19:1,4
61 (1)
17:7
63 (1)
17:17
6th (1)
29:14

7

7 (11)
32:13,15,15,20,22;
33:2;75:23;78:18;
79:2,13,18
756 (1)
17:21
759 (1)
17:21
793 (2)
17:7,17

8

83 (1)
76:12
85 (1)
51:18
865 (1)
18:5
88 (3)
12:11,12;74:16

9

95 (2)
51:19;76:12